Reuben Tomlinson
Dary
to
Wm Lee

Reuben Tomlinson
Dary
Sept 1871

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~352.~~ 126

REUBEN TOMLINSON, JAMES W. GRACE, FLEETWOOD LANNEAU, L. D. HALLONQUIST, T. K. SASPORTAS, J. W. DENNY, JOHN WOOLLY, R. D. DE SAUSSURE, T. J. COGHLAN, APPELLANTS,

vs.

THOMAS BRANCH, JOHN P. BRANCH, FREDERICK R. SCOTT, AND THOMAS P. BRANCH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED OCTOBER 17, 1871.

SUPREME COURT OF THE UNITED STATES.

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1 THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

At a circuit court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, 1871, before the Honorable Hugh L. Bond and the Honorable George S. Bryan, judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

THOMAS BRANCH, JOHN P. BRANCH, AND FREDerick R. Scott, citizens of the State of Virginia, and Thomas P. Branch, a citizen of the State of Georgia, copartners, under the name and style of Branch, Sons & Co.,
vs.
REUBEN TOMLINSON, A CITIZEN OF THE STATE of South Carolina, The South Carolina Railroad Company, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas,
J. W. Denny, John Woolly, R. D. De
2 Saussure, and T. J Coghlan, citizens of the State of South Carolina.

Be it remembered that, heretofore, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and seventy-one, the said Branch, Sons & Company impleaded the said Reuben Tomlinson, The South Carolina Raiload Company, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure, and T. J. Coghlan, in a bill of complaint for injunction and relief, as follows:

UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

The President of the United States of America to Reuben Tomlinson, auditor of state, a citizen of South Carolina; James W. Grace, county treasurer of Colleton County, a citizen of South Carolina; Fleetwood Lanneau, county treasurer of Charleston County, a citizen of South Carolina; L. D. Hallonquist, county treasurer of Barnwell County, a citizen of South Carolina; John D. Mount, county treasurer of
3 Orangeburg Co., a citizen of South Carolina; John Robertson, county treasurer of Richland County, a citizen of South Carolina; John Woolly, county treasurer of Edgefield County, a citizen of South Carolina; R. D. DeSaussure, county treasurer of Kershaw County, a citizen of South Carolina; T. J. Coghlan, county treasurer of Sumter County, a citizen of South Carolina; and The South Carolina Railroad Company:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday (the rules-day) of May next, twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of

Thomas Branch, a citizen of Virginia; John P. Branch, a citizen of Virginia; Frederick R. Scott, a citizen of Virginia; and Thomas P. Branch, a citizen of Georgia, copartners under the name and style of
4 Branch, Sons and Company. And also, that you do, on the rules-day next immediately after the day appointed and expressed, file or cause to be filed in the registry of said court, your plea, answer, or demurrer to the said bill of complaint. Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of the sovereignty and independence of the United States of America.

MAGRATH & LOWNDES,
Complainants' Solicitors.

DAN. HORLBECK,
C. C. C. U. S. for S. Ca.

MEMORANDUM.—The defendant is to enter his appearance in this suit in the clerk's office, on or before the first Monday of June, the rules day in June, or the bill will be taken pro confession.

M. & L.

5 And L. E. Johnson, marshal of the said United States for the district atoresaid, returned said subpœna endorsed as follows:

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 27 *April*, 1870.

I depute John A Shiell special deputy U. S. marshal to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

COLUMBIA, *April 29th*, 1870.

I hereby certify that I executed the within process by serving the within copy subpœna and copy of notice, motion injunction, personally, on Reuben Tomlinson & John Robertson, *personally*, on the 29th day of April, 1870.

JOHN A. SHIELL,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 27 *April*, 1870.

I hereby depute Harpin Riggs, sheriff Orangeburg Co., special deputy to execute the within process.

L. E. JOHNSON,
U. S. M.

6 ORANGEBURG, *May* 2, 1870.

I hereby certify that I executed the within process by personally serving the defendant with a copy of this writ, on the 2nd day of May, 1870.

HARPIN RIGGS,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 27th April, 1870.

I hereby depute J. K. Terry special deputy to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

WALTERBORO, COLLETON CO., 1870.

I hereby certify that I executed the within process by serving the within-mentioned subpœna & motion for injunction on the within-named James W. Grace, personally, on the 30th day of April, 1870.

J. K. TERRY,
Special Deputy.

7 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 27*th*, 1870.

I hereby depute Francis L. Walker deputy U. S. marshal to execute the within process by serving the within copies of subpœna & motion.

L. E. JOHNSON,
U. S. Marshal.

AIKEN, SO. CA., *May 2nd*, 1870.

I hereby certify that I executed the within process by leaving a subpœna conformably thereto, for the within-named John Woolly, at his most notorious place of residence, together with a notice of injunction in the above-mentioned case to him directed, on the 1st day of May, 1870.

FRANCIS L. WALKER,
Special Deputy.

I hereby certify that I executed the within process by leaving a subpœna ticket conformally thereto, for the within-named L. D. Hallonquist, at his most notorious place of residence, together with a notice of injunction in the above-mentioned case to him directed, on the 2nd day of May, 1870.

FRANCIS L. WALKER,
Special Deputy U. S. M.

8 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 29 April, 1870.

I hereby depute H. G. Gray special deputy U. S. marshal to execute the within process, by serving the within copies of subpœna & motion of injunction on D. R. DeSaussure, county treasurer.

L. E. JOHNSON,
U. S. Marshal.

CAMDEN, *May 4th*, 1870.

I hereby certify that I executed the within process by serving the within copies of subpœna & motion of injunction on D. R. DeSaussure, county treasurer of Kershaw County, State of South Carolina, on the 3rd day of May, 1870.

H. G. GRAY,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 27 *April*, 1870.

I hereby depute W. D. Hannifin to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

9 CHARLESTON, *April 29th*, 1870.

I hereby certifiy that I executed the within process by serving a copy of the within personally on W. J. Magrath, president of the So. Ca. R. R.; also served a copy of the within personally on Fleetwood Lanneau, county treasurer, on the 29th day of April, 1870.

W. D. HANNIFIN,
Special Deputy U. S. M.

SUMTER, SO. CA., *May* 2, 1870.

L. E. JOHNSON,
U. S. Marshal, South Carolina District.

DEAR SIR: I hereby acknowledge rec't of subpœna, injunction, and postponement of injunction in the case of Branch, Sons & Co. vs. R. Tomlinson, J. W. Grace, et al.

Respectfully,

T. J. COGHLAN,
County Treasurer Sumter County, So. Ca.

10 And upon the 26th day of April, A. D. 1870, the said Branch, Sons & Company, by Magrath & Lowndes, their solicitors, filed their bill of complaint for injunction and relief against the said Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquest, John Robertson, John Woolly, D. B. DeSaussure, T. J. Coghlan, and the South Carolina RailroadCompany, in words and of the tenor following:

In equity.

THE UNITED STATES,
South Carolina District:

To the honorable the judges of the fourth circuit of the circuit court of the United States:

The bill of complaint of Thomas Branch, a citizen of the State of Virginia; John P. Branch, a citizen of the State of Virginia; Frederick R. Scott, a citizen of the State of Virginia; Thomas P. Branch, a citizen of the State of Georgia; copartners under the name and style of Branch, Sons & Co., against Reuben Tomlinson, a citizen of the State of
11 South Carolina; the South Carolina Railroad Company, a body corporate by the act of the general assembly of the State of South Carolina; James W. Grace, a citizen of the State of South Carolina; Fleetwood Lanneau, a citizen of the State of South Carolina; L. D. Hallonquist, a citizen of the State of South Carolina; T. K. Sasportas, a citizen of the State of South Carolina; John Robertson, a citizen of the State of South Carolina; John Woolly, a citizen of the State of South Carolina; D. R. DeSaussure, a citizen of the State of South Carolina; T. J. Coghlan, a citizen of the State of South Carolina, showeth:

1. Your orators are the bona-fide owners of shares of the capital stock of the South Carolina Railroad Company; that the said South

Carolina Railroad Company, one of the defendants, is a body corporate, so created by an act of the general assembly of the State of South Carolina, and has been and is doing business under its charter; that Reuben Tomlinson is the auditor of state; and, with D. H. Chamberlain, who is attorney general; Niles G. Parker, who is the State treasurer; J.
12 L. Nagle, who is comptroller general; and F. L. Cardoza, who is secretary of state, constitute a State board of equalization; that James W. Grace is the county treasurer for Colleton County; Fleetwood Lanneau is the county treasurer of Charleston County; L. D. Hallonquist is the county treasurer for Barnwell County; T. K. Sasportas is the county treasurer for Orangeburg County, John Robertson is the county treasurer for Richland County, John Woolly is the county treasurer for Edgefield County, in the said State; D. R. DeSaussure is the county treasurer for Kershaw County, T. J. Coghlan is county treasurer for Sumter County.

2. That the said company was duly incorporated in December, 1835, by the name of Cincinnati and Charleston Railroad Company; that, subsequently, in December, 1837, the name of the said company was changed to the Louisville, Cincinnati and Charleston Railroad Company; and in December, 1843, the name was again changed to the South Carolina Railroad Company.

3. That, previous to this time, that is to say, in December, 1827,
13 the South Carolina Canal and Railroad Company had been duly incorporated by an act of the general assembly of the State of South Carolina.

4. That, by an act of the legislature in December, 1843, it was provided that whenever the written consent of the stockholders of the South Carolina Canal and Railroad Company shall have been obtained, the said South Carolina Canal and Railroad Company shall be merged in the said South Carolina Railroad Company; and thereupon, all the rights, privileges, and property of the South Carolina Canal and Railroad Company shall be vested in the South Carolina Railroad Company; and the said South Carolina Railroad Company shall be liable for all the debts of the South Carolina Canal and Railroad Company.

5. That such consent of the stockholders of the South Carolina Canal and Railroad Company has been duly obtained, and the South Carolina Canal and Railroad Company has, since the passage of the act, been merged in the South Carolina Railroad Company; and all the property, rights, and privileges thereof, become vested in the South Carolina Railroad Company.

14 6. That the Cincinnati and Charleston Railroad Company, the name of which was afterwards changed to the Louisville, Cincinnati and Charleston Railroad Company, and again, afterwards to the South Carolina Railroad Company; by the act of the legislature of 1835, when formed, was declared to have corporate existence "in perpetuity."

7. That, by the 43d section of the said act, it was further declared, "that the capital stock in the said company, the dividends thereon, and all the property, real and personal, belonging to the said company, shall be forever exempt from taxation in each and every of the said States of South Carolina, North Carolina, Tennessee, and Kentucky; and it shall not be lawful for either of the said States or any corporation, municipal, police, or other authority thereof, or of any town, city, county or district thereof, to impose any tax on such stock or dividends, property or estates: Provided, that the said stock or dividends, when the said dividends shall exceed the legal interest of the State, may be

subject to taxation by the State, in common with other money at interest, and interest thereon."

15 8. That the said act of the legislature of the State, incorporating the said Cincinnati Railroad Company, and which is now the South Carolina Railroad Company was, and is, a contract out of which certain legal rights arose, and the obligations of which contract cannot be impaired; and that the said South Carolina Railroad Company is specially excepted from the provisions of the 41st section of an act of the legislature, passed the 17th December, 1841, entitled "An act to incorporate certain villages, societies, and companies, and to renew and amend certain charters heretofore granted, and to establish the principles on which charters of incorporation will hereafter be granted.

9. That the said South Carolina Railroad Company has well and justly exercised the power conferred by its charter, and is well entitled to protection in all the rights, which belong to it under that contract.

10. That the constitution of the State of South Carolina subsequently was changed, and by that constitution, as the same was adopted,

16 April 16th, A. D. 1868, in Art. II, sec. 2, title, "Corporations," it was declared that "the property of corporations now existing or hereafter created, shall be subject to taxation, except in cases otherwise provided for in this constitution;" and in Article IX, sec. 1, title, "Finance and taxation," it was declared that "the general assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, except mines and mining claims, the proceeds of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes." And, saving and excepting these, no other exemptions are provided in the said constitution; that subsequently to the adoption of the said constitution, the legislature of the State of South Carolina, at a special session in the year of our Lord 1868, passed an act entitled "An act providing for the assessment and taxation of property. And in section 11 and other sections of said act did declare:

17 SEC. 11. The president and secretary of every railroad company whose track or road-bed, or any part thereof, is in this State, shall, annually, between the first of September and twentieth of October, return to the auditor of state, under their oaths, the total length of said road; the total length of said road in this State, and the length thereof in each county, township, city, and incorporated village in this State; the total length of their double track in this State, and the length thereof in each county, township, city, and incorporated village of this State; the total length of all their side-tracks, and the length thereof in each city, county, township, and incorporated village in this State; the location and value of all their shops, depots, grounds, station-houses, wood and water stations, buildings, stationary engines, tools, implements, and fixtures in South Carolina, and all other real estate necessary to the daily running operations of the road; the number and value each, of all their locomotive engines, passenger, freight, platform, gravel, construction, hand, and other cars; the value of their moneys

18 and credits; the total value of the entire road, appurtenances, and equipments, and the total value of said road in South Carolina, with its appurtenances and equipments.

SEC. 12. The president and secretary of every railroad company mentioned in the preceding section, shall, also, annually, between the first

of September and the twentieth of October, return to the county auditor of each county in South Carolina, through or into which such road, or any part thereof, may be located, a statement of the value of said road, and the property of the company in said county, and in each of the townships, cities, and villages of said county through or into which said road, or part thereof, is located, in the manner and form required by this act, in the return to the auditor of state.

SEC. 13. In ascertaining the value of the road and property of any railroad company, the value of the right of way, bed, and track of the whole road shall be fixed, and such value apportioned pro rata to each mile of the main track, and to the value of the number of miles of main track in each township, city, and incorporated village of each county in this State, through and into which said road is located, shall be added the value of the real-estate, fixtures, stationary engines, tools, implements, machinery, and other stationary property provided for use in the daily operations of the road, situate in said township, city, or village, and the total value of the rolling stock, moneys, and credits shall be apportioned pro rata to each mile of the main track of said road, and the amount thereof, according to the number of miles of main track in each township, city, and village in this State, added to the value of the main track in such township, city, and village respectively; and the aggregate value of said road and property in this State, and in each county, city, township, and incorporated village of this State, through or into which said road is located, shall be stated in said return.

SEC. 14. The return and oath required by this act, of officers of railroad companies, shall be made in such form as shall be prescribed by the auditor of state.

SEC. 15. If any railroad, its appurtenances, equipments, etc., shall be in the hands of a receiver, or other officer, such receiver, or other officer, shall make the returns required by this act.

SEC. 16. The auditor of state, or any person appointed by him for that purpose, may put any question in writing he may deem proper to any officer, agent, or receiver of any railroad company having any portion of its track in this State; and he may summon any officer, receiver, or agent of such company to appear before him and testify, under oath, (which said auditor is authorized to administer,) touching such railroad company's property, and the management and disposition thereof; and he may, by himself or some person appointed by him, examine the books and papers of such company in the hands of the company, or any of its officers, agents, or receivers; and all such officers, agents, and receivers shall answer, under oath, all such questions as shall be put to them, or either of them, by said auditor, or any person appointed by him for that purpose, relative to the condition, amount, and value of said company's property, and the management or disposition thereof; and if any such officer, receiver, or agent shall refuse or neglect to appear before said auditor, or the person appointed by him, or to answer any question put to him or them as aforesaid, or submit the books and papers aforesaid for examination in manner aforesaid, he shall be deemed guilty of a misdemeanor, and upon indictment and conviction therefor in the court of general sessions for any county, (which court shall have complete and full jurisdiction in all such cases,) shall be fined in any sum not exceeding five hundred dollars, and costs of prosecution, and confined in the jail of said county until he answers all questions which may be put to him by the auditor of state, and until said fine and costs be paid.

SEC. 17. The auditor of state, treasurer of state, secretary of state, comptroller general, and attorney general of the State, shall constitute a State board of equalization, (a majority of whom shall constitute a quorum for the transaction of business,) who shall meet at the
22 office of the auditor of state, at the capital, on the second Wednesday of November, annually, and equalize the value of the property of railroad companies whose roads are wholly or partially in this State, as returned to the auditor of state under the provisions of this act, by increasing the value of the roads and property of such companies as shall have been, in their judgment, returned at too low a valuation, and diminishing the values of such as may have been returned at t'o high a valuation. They shall keep a record of their proceedings, which shall be signed by all the members present, and deposited with and kept by the auditor of state; and a majority of the members present shall be competent to decide all questions which may come before said board.

SEC. 18. The auditor of state shall certify to the county auditor of each county in which any railroad, or part thereof, may be located, the valuations of railroad property in said county as returned to him,
23 with all additions made to, or deductions from, the valuation of the property of any railroad in said county, by the State board of equalization. And the county auditor shall charge the railroad company in the several townships, cities, and incorporated villages, of their county, for taxation, with the valuations returned by such company or companies, after adding thereto or deducting therefrom, the amounts directed by the auditor of state.

SEC. 19. If any railroad company, or its officers, shall fail to make the returns to the auditor of state required by this act, on or before the twentieth day of October, annually, the State board of equalization shall proceed to ascertain the value of said company's road and property, according to the principles prescribed in this act, from the best information they can conveniently obtain, and add thereto fifty per centum as penalty, and apportion the same to the several counties, townships, cities, and incorporated villages, through or into which said road or any part thereof may be located. And the state auditor shall certify the same to the several county auditors, who shall place
24 the same on their duplicates for taxation. And if any such company, or its officers, shall fail to make the return to any county auditor required by this act, the state auditor shall ascertain the amount properly chargeable to such company in said county, and certify the same to the proper county auditor, adding ten dollars thereto as penalty, (the whole of which penalty shall be paid into the State treasury). And the county commissioners shall charge such company in the proper municipalities with the taxes on the value so certified by the state auditor, and charge said company on the duplicate separately, with said ten dollars, without charging any taxes thereon. And the county treasurer shall pay the same into the State treasury at his first annual settlement after the collection thereof.

12. That, subsequently, by an act approved the 28th February, 1870, entitled "An act to alter and amend an act entitled 'An act to provide for the assessment and taxation of property,'" the legislature
25 did, in section 5 of said act, declare that the collection of taxes shall not be stayed or prevented by any injunction, writ, or order, issued by any court or officer, except as provided in this act, and in the "Act to provide for the assessment and taxation of property aforesaid."

And in the same act it is further provided as follows by section 6: "Whenever any person or persons charged with taxes upon the books of any tax-collector in this State shall state, in writing, to said collector that he or they have been erroneously or illegally charged with the same, said collector shall submit to the county auditor a full statement of the facts in the case, which statement shall be forwarded to the state auditor, with such additional information relating thereto as the said county auditor may be able to give; and said tax-collector shall not be required to proceed against the party or parties so claiming to have been erroneously or illegally charged with taxes by distress or otherwise until the state auditor shall, in writing, direct him so to do."

26 And by section 7: "In any action or proceeding against any tax collector in this State for the purpose of recovering any property or money alleged to have been erroneously or illegally assessed and collected, the party bringing such action or proceeding shall make it appear that a notice in writing of the claim on which such suit may be brought was given to said tax collector in pursuance of the sixth (6) section of this act; and unless it shall be made to appear that said collector has proceeded contrary to the provisions of this act, the amount recovered in such suit shall not exceed the value of the property or money aforesaid.

13. That, by the 81st section of the same act, passed at the special session in 1868, it was also provided that, "if any taxes charged on any real estate be regularly paid, and such real estate be erroneously returned delinquent, and sold for such taxes, the sale shall be totally void; or if any taxes shall be illegally assessed and collected, when the same shall become known to the county auditor he shall, on demand

27 of the party interested, submit the matter to the auditor of the State; and if the auditor of state approve thereof, in writing, the amount paid by the purchaser at such void sale, or the amount so illegally collected, shall be repaid to the party, paying the same out of the county treasury on the order of the county auditor; and so much of said taxes as shall have been paid into the State treasury shall be refunded to the county treasury, and the county auditor shall retain the same in his next annual settlement, and charge the State therewith." That the South Carolina Railroad Company, regarding itself as, under its charter of incorporation, exempted from taxation, and therefore not bound to make the return required in the eleventh section of the act of the legislature passed at the special session in 1868, so notified Reuben Tomlinson, the auditor of state, and made no such return as is required by the said section to be made by those whose property is subject to taxation; that the State board of equalization, a board, by the

28 17th section of the act, composed of the auditor of state, treasurer of the state, secretary of state, comptroller general, and attorney general of the State, have, notwithstanding, proceeded to fix the value of the property of the said corporation, and have added thereto fifty per centum as penalty, and have apportioned the same to the several counties, townships, cities, and incorporated villages through or into which said road or any part thereof may be located; and the state auditor has certified the same to the several county auditors, who have placed the same on their duplicates for taxation. And other penalties prescribed in the said act have been imposed, and are about to be enforced by the county treasurer of each county in which the South Carolina Railroad Company has any property.

14. That, by the 35th section of the said act of 1868, "it is declared that the county treasurer may enforce the collection of any tax or pen-

alty assessed under this act at any time after the same becomes due, by distraint, attachment, or other legal proceedings, instituted
29 in his name as such treasurer; and in case of his death, or retirement from office before the collection of such taxes or penalties, his successor in office or subsequent treasurer may be made a party to such proceedings, and prosecute the same to final judgment and execution;" and that the said James W. Grace, county treasurer for Colleton County; John Woolly, county treasurer for Edgefield County; L. D. Hallonquist, county treasurer for Barnwell County; John Robertson, county treasurer for Richland County; Fleetwood Lanneau, county treasurer for Charleston County; D. R. De Saussure, county treasurer for Kershaw County; T. J. Coghlan, county treasurer for Sumter County; T. K. Sasportas, county treasurer for Orangeburg County, have notified the South Carolina Railroad Company that, if the tax is not paid on the property of the said company in the said counties, execution will be issued against the said road.

15. That the said South Carolina Railroad Company, as your orators are informed, is unable by any proceedings, permitted to be
30 issued out of the courts of the State, to protect the property of the corporation, which is the property of its stockholders, from the great wrong and injury with which it has been threatened, and which is now about to be enforced. That, by the 6th section of the act approved 28th February, 1870, it is positively declared that the collection of taxes shall not be stayed or prevented by any injunction, writ, or order, issued by any court or officer, except as provided in this act or the act of the special session of 1868.

16. That, by the 6th section of the act approved 28th February, 1870, the power is reserved to the state auditor to decide whether the tax complained of as erroneous or illegally charged, shall be collected. That if the state auditor shall decide that such taxes have not been erroneously or illegally charged, no injunction, writ, or order of any court shall stay the collection of said tax. That, in section 7 of the act of 28th February, 1870, a remedy is professed to be given by an action against the tax collector, but it is wholly uncertain and inade-
31 quate. In section 8 of the same act, it is provided that the judgment, if recovered in such suit, shall be paid in the manner provided in the 81st section of act passed at the special session of 1868, And the 81st section so referred contemplates no payment in any case, unless the auditor of the State shall approve thereof in writing. That thus judicial power is taken from those to whom, under the constitution of the State, it is committed; the exercise of it by them, in certain cases, prohibited, and that power and the exercise of it, transferred to the state auditor.

17. That thus, while all protection is denied to the South Carolina Railroad Company against the collection of the tax, although illegal, no certain, adequate relief at law can be had for the recovery of the same, although illegally collected, unless the state auditor shall assent thereto.

18. That your orators having been informed of the tax assessed and payment of which is to be enforced on the property of the said South Carolina Railroad Company, applied to the president and direc-
32 tors of the said company to resist the same.

19. That they informed your orators they had no means with which to resist the collection of the said tax; that the act of 1870 had taken from them the right hitherto enjoyed by any corporation within or citizen of the State, to submit to the courts of the State

the question of the legality of a tax about to be enforced; and that such right was now denied to the South Carolina Railroad Company, and that under such circumstances, they did not know what opposition they could make to the collection of the said tax; that when forced to pay the same they did not know what measures they could adopt to recover back the money if paid, or their property if sold. That, as they were advised, if they had any remedy whatever, it was an action against the tax collectors, but that when repayment of money was ordered to be made by these officials, they were officers not able to respond to the payment of so large an amount.

33 But that, moreover, the act did not even contemplate or allow a recovery against these officers, so that a judgment would affect them personally; for if a verdict was had against them, other legislative enactments professed to provide a mode in which the judgment should be satisfied, but that such mode was uncertain in all respects and wholly inadequate to secure to the South Carolina Railroad Company the repayment of the money if paid, or the recovery of its property if sold. That no repayment of money or recovery of property, could be had under any circumstances, unless the state auditor directed it, and if he would direct it, a matter most improbable after he had decided that it should be assessed, it would then still remain for the State to decide whether the money should be paid back, if the money had been paid, or the property restored, if the property had been sold; that this matter rested in the pleasure of the State, as the State could not be sued, and thus no certain or adequate means existed for the repayment of the money, although illegally collected, or the recov-

34 ery of the property, if illegally sold.

20. That, under these circumstances, a certain well-defined, legal right of great value to the South Carolina Railroad Company, and to each and all of the stockholders therein, (a material part of a contract between the State of South Carolina and the said South Carolina Railroad,) is about to be violated and destroyed by the act of the legislature in declaring, through the said board of equalization and the state auditor, that the property of the said corporation shall be assessed for taxes, and that the taxes estimated on such assessment shall be paid, or, in default thereof, that the property of the said corporation shall be sold; that the exemption of the property of the said corporation is set forth and declared in language plain and explicit; and such exemption was, and is, a legal right belonging to the said South Carolina Railroad, and is of great value to it, and to your orators and all other stockholders; that it is a material part of that contract, which was

35 made between the said State and the said corporation by the act of the legislature of the said State for the incorporation of the said company, and the other acts relating thereto, and the assent to and the acceptance by the stockholders of the same.

21. That the wrong and injury, so done to the said corporation, is wrong and injury done to your orators and all other stockholders, who are the holders and owners of stock in the said corporation, held and purchased upon the faith of the State to preserve the pledges and secure all the rights granted to the said corporation; and that the assessment of the said tax, and payment of which is about to be enforced, in violation of the terms of the contract, as the same is found in the several acts of the legislature incorporating the said company, is in open disregard of the Constitution of the United States, which forbids any State to pass any law impairing the obligation of contracts.

22. That not only is the imposition of the said tax assessed on the

property of the said corporation unconstitutional in this, that it
36 impairs the obligation of the contract by the violation of material terms in the charter, which is a contract between the State and the said corporation, but that, furthermore, the denial to the said corporation of all proceedings to test, by judicial decision in the courts of the said State, the right of the State to have assessed and collected the said tax; but, on the contrary, declaring that no writ or order of any court of the State shall stay or delay the collection of the said tax, forcing the said corporation to pay the said tax, however illegally imposed, and then remitting it to doubtful, protracted, inadequate, and expensive proceedings, to recover back the amount of taxes so assessed, if paid by it, is in violation of the Constitution of the United States, which declares that "no person shall be deprived of property without due process of law." (Amend. Const., art. 5.)

23. That, in all these respects, your orators are exposed, because of such unlawful proceedings on the part of the State, to great wrong and damage; that they have no adequate remedy at law, and are entitled to relief in this court, according to its well-established rule
37 in such cases.

24. (1.) That they are entiled to this relief, because, as a stockholder in the South Carolina Railroad Company, the property of the said corporation is, by its charter, exempt from taxation; and the assessment of the same for taxation and the enforcement of the collection of the same is unconstitutional.

(2.) That the South Carolina Railroad Company is, by the act of the legislature, in 1870, debarred and prohibited from any and all adequate legal remedies to protect itself and the property of your orators, and other stockholders, from the great damage and injury which must result from the collection of the said tax.

(3.) That the act of the legislature, in so far as it is held to declare the property of this corporation liable for taxation; the action of the board of equalization in assessing the value of the property of said company and upon such assessment, estimating a certain large amount in money as a tax to be paid by the said company; the certificate of such assessment, by the state auditor to the county auditors; and the
38 action of the county auditors, county commissioners, and all other officials, in proceeding to enforce the collection of said tax is, in all these respects, unconstitutional, without the authority of law, and operates great hardship and wrong to your orators.

(4.) That there is no adequate relief at law; nor can relief be had except in this court.

(5.) That this court, inasmuch as the South Carolina Railroad Company cannot intervene for the protection of its stockholders, will protect the rights of your orators, and particularly will protect the property of the said corporation, until the question can be made and decided as to the right of the State to enforce the said tax.

25. That the property of the South Carolina Railroad Company, and all of which is exempt from taxation, and which is within the limits of this State, is partly in the counties of Charleston, Colleton, Barnwell, Orangeburg, Richland, Edgefield, Sumter, and Kershaw. And to the county auditor to each of these counties, a certain amount has
39 been certified by Reuben Tomlinson, the state auditor, as that on which the tax is to be assessed; and the amount of such tax has been given to the county treasurer in each of said counties, by whom the payment of the said tax is about to be enforced by the sale of the property of the said corporation.

26. That the said South Carolina Railroad Company has made no profits from which it has been able to declare dividends and therefore has not declared dividends which exceed the legal interest of the State. That from unavoidable causes, the said South Carolina Railroad Company suffered great loss and damage in the destruction of its road, and the loss and injury done to its equipment; and the earnings of the said company have for several years been necessarily consumed in the reparation of the road and the completion of its equipment; that much work remains to be done and large amount of moneys yet to be expended to put the road in complete order; and that to enforce the payment of the tax now assessed upon the valuation made by the
40 board of equalization, by which, without a trial of the right of the State to impose such tax, the said South Carolina Railroad Company is compelled to pay the said tax or have its property sold, greatly affects the value of the shares of your orators in the stock of the said company, exposes them to certain loss, and may render their shares almost valueless. And all this is done, while there is a positive exemption from taxation of the property of the said company; and an inhibition and denial to the said company of all means by which it could in the courts of the State, protect itself by claiming the exemption in its charter, from the enforcement of such tax.

27. The county treasurers, by whom the said tax is about to be enforced, are the persons hereinafter named, and who are made defendants, that is: James W. Grace is the county treasurer for Colleton County; Fleetwood Lanneau is the county treasurer for Charleston County; L. D. Hallonquist is the county treasurer for Barnwell County; T. K. Sasportas is the county treasurer for Orangeburg County;
41 John Robertson is the county treasurer for Richland County; John Woolly is the county treasurer for Edgefield County; D. R. DeSaussure, county treasurer for Kershaw County; T. J. Coghlan is the county treasurer for Sumter County.

28. All of which doings and actings, on the part of the said defendants, is contrary to equity and conscience, and tend to the manifest wrong and injury of your orators in the premises, and in the same they are remediless, except in this court, where matters of this kind are cognizable and relievable.

29. To the end, therefore, that the several parties named as defendants may full, true, and perfect answer make to the premises; that the said Reuben Tomlinson, auditor of state, may be restrained and enjoined from certifying or giving any valuation of the property of the South Carolina Railroad Company to the county auditors, that the taxes thereon may be assessed and given to the county treasurers for the purpose of enabling them to collect the taxes charged upon such assessments of the value of the property of the said Company; that the
42 said James W. Grace, the county treasurer for Colleton County; Fleetwood Lanneau, the county treasurer for Charleston County; L. D. Hallonquist, the county treasurer for Barnwell County; T. K. Sasportas, the county treasurer for Orangeburg County; John Robertson, the county treasurer for Richland County; John Woolly, the county treasurer for Edgefield County; D. R. DeSaussure, the county treasurer for Kershaw County; T. J. Coghlan, the county treasurer for Sumter County, may be restrained and enjoined from proceeding in each of their several counties, and for which they are county treasurers, by execution or other process of any kind, from enforcing the payment of the taxes so in each county charged upon the assessment made of the value of the property of the South Carolina Railroad Company in such county; and

that the said South Carolina Railroad Company may be restrained and enjoined from the payment of the taxes so demanded by the said county treasurers: May it please this honorable court to grant unto your orators not only your writ of injunction enjoining and restrain-
43 ing the said Reuben Tomlinson, state auditor; James W. Grace, the county treasurer for Colleton County; Fleetwood Lanneau, the county treasurer for Charleston County; L. D. Hallonquist, the county treasurer for Barnwell County; T. K. Sasportas, the county treasurer for Orangeburg County; John Robertson, the county treasurer for Richland County; John Woolly, the county treasurer for Edgefield County; D. R. DeSaussure, the county treasurer for Kershaw County; T. J. Coghlan, the county treasurer for Sumter County, their agents and attorneys, from doing or causing to be done all or any of the matters and things hereinbefore complained of, but also your writ of subpœna directed to the said Reuben Tomlinson; Jame' W. Grace, the county treasurer for Colleton County; Fleetwood Lanneau, the county treasurer for Charleston County; T. K. Sasportas, the county treasurer for Orangeburg County; John Robertson, the county treasurer for Richland County; John Woolly, the county treasurer for Edgefield County; D. R. DeSaussure, the county treasurer for Kershaw County; T. J.
44 Coghlan, the county treasurer for Sumter County; and to the said South Carolina Railroad Company, commanding them on a certain day, and under a certain penalty, to be therein named, to be and appear before your honors in this honorable court, then and there true, direct, and perfect answer make to all and singular the premises, and to abide and perform such further order and decree in the premises as to your honors shall seem meet; and your orators will ever pray, &c.

MAGRATH & LOWNDES, *Solicitors.*

Personally appeared before me, Thomas P. Branch, one of the co-partnership of Branch, Sons & Co., the complainants in this said bill of complaint, and says that the matters and things therein set forth, so far as they are within his own knowledge, are true; and so far as they depend upon the knowledge and information of others, he believes them to be true. THOMAS P. BRANCH.

Sworn to and subscribed before me, in the city of Augusta, and State of Georgia, this twenty-third day of April, eighteen hundred and seventy, as witness my official signature and seal.

[SEAL.] FRANK H. MILLER,
Commissioner of South Carolina, in Georgia.

45 And upon the said 27th day of April, 1870, the said complainants, by their said solicitors, gave the following notice of motion for a preliminary injunction:

U. S. court, fourth circuit.

BRANCH, SONS & CO. *vs.* REUBEN TOMLINSON, JAMES W. GRACE, et al.	Bill to prohibit the assessment & and collection of taxes from The So. Ca., R. R. Co.

To Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, John Robertson, John Woolly, D. R. DeSaussure, T. J. Coghlan, and the South Carolina Railroad Company:

Take notice that, upon the 3rd day of May, 1870, at 11 o'clock a. m.

or as soon as counsel can be heard, a motion will be made in the circuit court of the United States sitting in Charleston, for an injunction to restrain the collection of taxes professed to be assessed on the property of the South Carolina Railroad Company, & collected under the authority of the State of South Carolina.

MAGRATH & LOWNDES,
Solicitors.

46 And, upon the 30th day of April, 1870, the said complainants, by their said solicitors, gave the following amended notice of motion for a preliminary injunction.

U. S. court, fourth circuit.

BRANCH, SONS & CO. *vs.* REUBEN TOMLINSON, JAMES W. GRACE, ET al.	Bill to prohibit the assessment & collection of taxes from the So. Ca. R. R. Co.

To Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, John Robertson, John Woolly, D. R. De Saussure, T. J. Coghlan:

At the suggestion of the Hon. D. H. Chamberlain, attorney general of the State, the motion for the injunction in this case has been postponed from the 3rd May, until Wednesday, the 11th day of May, 1870.

On that day, at 11 o'clock, a. m., or as soon as counsel can be heard, the motion will be made in the circuit court of the United States, sitting in Charleston, for an injunction to restrain the collection of
47 taxes professed to be assessed on the property of the South Carolina Railroad Company, & collected under the authority of the State of South Carolina.

MAGRATH & LOWNDES,
Solicitors.

And L. E. Johnson, marshal of the said United States for the district aforesaid, returned said notice endorsed as follows:

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 30th April, 1870.

I hereby depute H. G. Gray special dep. U. S. marshal to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

CAMDEN, *May 4th,* 1870.

I hereby certify that I executed the within process by serving the within copy of subpœna & motion of injunction on D. R. De Saussure, county treasurer of Kershaw County, State of South Carolina, on the 3rd day of May, 1870.

H. G. GRAY,
Special Dep. U. S. M.

48 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, April 30th, 1870.

I hereby depute R. W. Wallace, of Columbia, S. C., to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

COLUMBIA, S. C., *May 2d*, 1870.

I hereby certify that I executed the within process, by serving copies of the notice of postponement of motion for injunction on Reuben Tomlinson and John Robertson, on the 2d day of May, 1870.

R. M. WALLACE,
U. S. Special Dep.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 30 *April*, 1870.

I hereby depute Harpin Riggs special deputy U. S. marshal to execute the within process by serving copy of notice on T. K. Sasportas.

L. E. JOHNSON,
U. S. Marshal.

49 I hereby certify that I executed the within process by personally serving the defendant T. K. Sasportas with a copy of this writ on the 2d day of May, 1870.

HARPIN RIGGS,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 30 *April*, 1870.

I hereby depute W. D. Hannifin special deputy U. S. marshal to execute the within process by serving a copy of notice postponement motion injunction on Fleetwood Lanneau.

L. E. JOHNSON,
U. S. Marshal.

MAY 2D, 1870.

I hereby certify that I executed the within process by serving copy of within on Mr. Fleetwood Lanneau, by leaving the same at his office, Fire-proof Building, Charleston, at 11 o'clock a. m., on the 30th day of April, 1870.

W. D. HANNIFIN,
Special Deputy.

50 And, on the 12th day of May, A. D. 1870, came into court the parties aforesaid, by their solicitors aforesaid, and, upon the motion of the said Branch, Sons & Co., by Magrath & Lowndes, their solicitors, the court granted an order for a writ of preliminary injunction against the said defendants in words and of the tenor following:

In the circuit court U. S. fourth circuit, South Carolina district.

BRANCH SONS & CO.
vs.
REUBEN TOMLINSON ET AL.

On hearing the bill read in the case, with the affidavit of the complainants and other papers submitted, it is ordered that the writ of injunction, as prayed for in the bill, do forthwith issue, directed to the defendant Reuben Tomlinson, the state auditor; James W. Grace, county treasurer for Colleton County; Fleetwood Lanneau, county treasurer for Charleston County; L. D. Hallonquist, county treasurer for Barnwell County; T. K. Sasportas, county treasurer for Orangeburg County; John Robertson, county treasurer for Richland County; John Woolly, county treasurer for Edgefield County; D. R. DeSaussure, county
51 treasurer for Kershaw County; T. J. Coghlan, county treasurer for Sumter County, prohibiting them, or any or either of them, from proceeding by distress or execution, or in any other manner whatsoever, to assess, impose, or collect any tax upon the capital stock of the South Carolina Railroad Company, or the dividends thereon, or the property and estates, real and personal, belonging to the said South Carolina Railroad Company, professed to be assessed or collected under any act or acts of the legislature of the State of South Carolina, directing the assessment and collection of such tax, and that the South Carolina Railroad Company be also prohibited from consenting to pay and from paying such tax to the parties above named, or any or either of them, and that such injunction do continue of force until the coming in of the answers of the several parties defendants, and the further order of the court.

GEO. S. BRYAN,
U. S. Judge Dist. of So. Ca.

12TH MAY, 1870.

And, on the said 12th day of May, 1870, writs of injunction
52 against the said defendants were issued in obedience to the said order, which writs are in words and of the tenor following:

UNITED STATES OF AMERICA,
District of South Carolina:

To Reuben Tomlinson, state auditor; James W. Grace, county treasurer for Colleton County; Fleetwood Lanneau, county treasurer for Charleston County; L. D. Hallonquist, county treasurer for Barnwell County; T. K. Sasportas, county treasurer for Orangeburg County; John Robertson, county treasurer for Richland County; John Woolly, county treasurer for Edgefield County; D. R. DeSaussure, county treasurer for Kershaw County; T. J. Coghlan, county treasurer for Sumter County:

Whereas, in a suit now pending in the circuit court of the United States for South Carolina, between Branch, Sons and Company, complainants, and Reuben Tomlinson, auditor of the State of South Carolina, and others, defendants, it has been ordered by the said court, after argument, that a writ of injunction do issue forthwith,
53 directed to the said Reuben Tomlinson, state auditor; James W. Grace, county treasurer for Colleton County; Fleetwood

Lanneau, county treasurer for Charleston County; L. D. Hallonquist, county treasurer for Barnwell County; T. K. Sasportas, county treasurer for Orangeburg County; John Robertson, county treasurer for Richland County; John Woolly, county treasurer for Edgefield County; D. R. DeSaussure, county treasurer for Kershaw County; T. J. Coghlan, county treasurer for Sumter County, prohibiting them, or either or any of them, from proceeding by distress or execution, or in any other manner whatsoever, to assess, impose, or collect any tax upon the capital stock of the South Carolina Railroad Company, or the dividends thereon, or the property and estates, real and personal, belonging to the said South Carolina Railroad Company, professed to be assessed or collected under any act or acts of the legislature of the State of South Carolina, directing the assessment and collection of such tax. And whereas, it has been further ordered, that such injunction do continue in force until the coming in of the answers of the several parties defendants, and until the further order of the court:

Now, therefore, in pursuance and execution of the said order hereinbefore recited, you, the said Reuben Tomlinson, the state
54 auditor; James W. Grace, county treasurer for Colleton County; Fleetwood Lanneau, county treasurer for Charleston County; L. D. Hallonquist, county treasurer for Barnwell County; T. K. Sasportas, county treasurer for Orangeburg County; John Robertson, county treasurer for Richland County; John Woolly, county treasurer for Edgefield County; D. R. DeSaussure, county treasurer for Kershaw County; T. J. Coghlan, county treasurer for Sumter County, of the State of South Carolina, are hereby strictly enjoined and prohibited from proceeding by distress or execution, or in any other manner whatsoever, to impose or collect any tax upon the capital stock of the South Carolina Railroad Company, or the dividends thereon, or the property or estates, real and personal, belonging to the said South Carolina Railroad Company, professed to be assessed or collected under any act or acts of the legislature of the State of South Carolina, directing the assessment and collection of such tax. And you are enjoined and prohibited from so doing, until the coming in of the answers of the several parties, defendants in this cause, and until the further order of this court.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Charleston, this twelfth day
55 of May, anno Domini 1870, and in the year of the independence of the United States of America the ninety-fourth.

MAGRATH & LOWNDES,
Compl'ts' Soli's.

DAN. HORLBECK,
C. C. C. U. S. for So. Ca.

Which writ was returned by Lewis E. Johnson, marshal of the United States for the district aforesaid, endorsed as follows:

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, May 12th, 1870.

I hereby depute W. D. Hannifin to execute the within process by serving copy of injunction on Fleetwood Lanneau, county treasurer.

L. E. JOHNSON,
U. S. Marshal.

CHARLESTON, 13*th May*, 1870.

I hereby certify that I executed the within process by leaving a copy of injunction at the county treasury office, Charleston, S. C., with Mr. Eason, treasurer's clerk, on the 13th day of May, 1870, at 10 a. m.

W. D. HANNIFIN,
Special Deputy.

56 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 12 *May*, 1870.

I hereby depute John A. Shiell to execute the within process by serving copie of injunction on R. Tomlinson and John Robertson.

L. E. JOHNSON,
U. S. Marshal.

COL., *May* 14*th*, 1870.

I hereby certify that I executed the within process by serving copies of injunction on R. Tomlinson and John Robertson, on the 14th day of May, 1870.

JOHN A. SHIELL, *Sp. Dep.*

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 12*th May*, 1870.

I hereby depute Francis L. Walker deputy to execute the within process in serving copies of injunction on John Woolly, co. treasurer for Edgefield, L. D. Hallonquist, co. treasurer for Barnwell.

L. E. JOHNSON, *U. S. Marshal.*

AIKEN, SO. CA., *May* 18*th*, 1870.

I hereby certify that I executed the within process by delivering to John Woolly, on the 17th, and to L. D. Hallonquist, on the 18th day of May, a copy of injunction in the above-mentioned case, at their places of residence in Edgefield and Barnwell, on the 17 day of May, 1870.

FRANCIS L. WALKER,
Special Deputy.

57 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 12 *May*, 1870.

I hereby depute J. K. Terry special dep. U. S. M. to execute the within process in serving a copy of injunction on *John* [James] W. Grace, county treasurer Colleton Co.

E. L. JOHNSON,
U. S. Marshall.

I hereby certify that I executed the within process by serving the within James W. Grace, personally, on the 17th day of May, 1870.

J. K. TERRY,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 12 *May*, 1870.

I hereby depute H. G. Gray to execute the within process in serving

a copy of injunction on D. R. De Saussure, county treasurer, Camden, S. C.

L. E. JOHNSON,
U. S. Marshal.

I hereby certify that I executed the within process by serving on D. R. DeSaussure, county treasurer of Kershaw Co., a copy of injunction in the case of Branch, Sons & Co. vs. Reuben Tomlinson and others, on the 18th day of May, 1870.

H. G. GRAY,
Special Deputy.

58 SUMTER, *May 16th*, 1870.

L. E. JOHNSON, *U. States Marshal.*

D'R SIR: I have the honor to acknowledge service of copy of injunction in the case of Branch, Sons & Company, vs. Reuben Tomlinson & others, dated at Charleston, May 12, 1870.

Respectfully,

T. J. COGHLAN,
C. T. Sumter County, S. C.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, May 14th, 1870.

I hereby depute John A. Shiell to execute the within process by serving a copy of injunction on J. W. Denny, county treasurer for Richland County.

L. E. JOHNSON,
U. S. Marshal.

59 COLUMBIA, S. C., *May 16th*, 1870.

I hereby certify that I executed the within process by serving a copy of the injunction on J. W. Denny, on the 16th day of May, 1870.

JOHN A. SHIELL,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 12th May, 1870.

I hereby depute Harpin Riggs, sheriff, special deputy U. S. marshal to execute the within process in serving a copy of injunction on T. K. Sasportas.

L. E. JOHNSON,
U. S. Marshal.

MAY 14TH, 1870.

I hereby certify that I executed the within process by personal service, this day, on T. K. Sasportas, on the 14th day of May, 1870.

HARPIN RIGGS,
Special Deputy.

60 THE UNITED STATES OF AMERICA:

To the South Carolina Railroad Company:

Whereas, in a suit now pending in the circuit court of the United

States for the State of South Carolina, between Branch, Sons and Company, complainants, and Reuben Tomlinson, auditor of the State of South Carolina, and others, defendants, it has been ordered that a writ of injunction do issue forthwith, prohibiting the said South Carolina Railroad Company from consenting to pay or from paying to Reuben Tomlinson, auditor of the State of South Carolina; James W. Grace, county treasurer for Colleton County; Fleetwood Lanneau, county treasurer for Charleston County; L. D. Hallonquist, county treasurer for Barnwell County; T. K. Sasportas, county treasurer for Orangeburg County; John Robertson, county treasurer for Richland County; John Woolly, county treasurer for Edgefield County; D. R. DeSaussure, county treasurer for Kershaw County; T. J. Coghlan, county treasurer for Sumter County, or to any or either of them any tax imposed, or assessed upon the capital stock of the South Carolina Railroad Company, or the dividends thereon, or the property and estates, real and personal, belonging to the said South Carolina Railroad Company, professed to be assessed
61 or collected under any act or acts of the legislature of the State of South Carolina, directing the assessment and collection of such tax. And, whereas, it has been further ordered, that such injunction shall continue of force until the coming in of the answers of the several parties defendants, and the further order of the court:

Now, therefore, in pursuance and execution of the order hereinbefore recited, you, the South Carolina Railroad Company, are hereby strictly enjoined and prohibited from consenting to pay, or from paying, until the answers of the several parties defendants in this cause shall come in, and until the further order of the court, to Reuben Tomlinson, auditor of the State of South Carolina; James W. Grace, county treasurer for Colleton County; Fleetwood Lanneau, county treasurer for Charleston County; L. D. Hallonquist, county treasurer for Barnwell County; T. K. Sasportas, county treasurer for Orangeburg County; John Robertson, county treasurer for Richland County; John Woolly, county treasurer for Edgefield County; D. R. DeSaussure, county treasurer for Kershaw County; T. J. Coghlan, county treasurer for Sumter County, or to any or either of them, any tax imposed or assessed upon the capital stock of the South Carolina Railroad Company or the dividends thereon, or the property or estates, real or personal, belonging to the said
62 South Carolina Railroad Company, professed to be assessed or collected under any act or acts of the legislature of South Carolina, directing the assessment or collection of such tax.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Charleston, the 12th day of May, anno Domini 1870, and in the year of the independence of the United States of America the ninety-fourth.

MAGRATH & LOWNDES,
Compl'ts' Solicitors.
DAN. HORLBECK,
C. C. C. U. S. for S. Ca.

Which writ was returned by Lewis E. Johnson, marshal of the United States for the district aforesaid, endorsed as follows:

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, May 13th, 1870.

I hereby depute W. D. Hannifin, S. D. U. S. M. to execute the within process.
L. E. JOHNSON,
U. S. Marshal.

63 CHARLESTON, *May 13th*, 1870.

I hereby certify, that I executed the within process by serving a copy of the within injunction, personally, on J. R. Emery, auditor of the South Carolina Railroad, on the 13th day of May, 1870.

W. D. HANNIFIN,
Special Deputy.

And on the 13th day of May, A. D. 1870, there was made by the said court, an order to amend the bill of the said complainants, which order is in words and of the tenor following:

BRANCH, SONS & CO.
vs.
REUBEN TOMLINSON ET AL.

It being made to appear that John Robertson, named in the bill in the above case, & in the order of the court made therein, has been removed, and J. W. Denny is now the county treasurer for Richland County, it is ordered that the bill be amended by substituting the name of J. W. Denny, as county treasurer for Richland County,
64 in place of John Robertson, and that subpœna be served on the said J. W. Denny; and that the writ of injunction directed to issue, be served on the said J. W. Denny, county treasurer for Richland County.

GEO. S. BRYAN,
U. S. Judge, Dist. of S. Ca.

13TH MAY, 1870.

And, on the said 13th day of May, A. D, 1870, was issued to the said J. W. Denny, a subpœna, in words and of the tenor following:

UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

The President of the United States of America to J. W. Denny, county treasurer of Richland County, a citizen of the State of South Carolina:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday of June next, twenty days after the service thereof, then and there true and perfect answer
65 to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Thomas Branch, a citizen of the State of Virginia; John P. Branch, a citizen of the State of Virginia; Frederick R. Scott, a citizen of the State of Virginia; Thomas P. Branch, a citizen of the State of Georgia, copartners in trade under name and firm of Branch, Sons & Company.

And also, that you do, on the rules-day next immediately after the day appointed and expressed, file or caused to be filed, in the registry of said court, your plea, answer, or demurrer, to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the thirteenth day of May in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of the sovereignty and independence of the United States of America.

MAGRATH & LOWNDES,
Complainants' Solicitors.

[SEAL U. S.] DAN. HORLBECK,
C. C. C. U. S., for So. Ca.

66 Which subpœna was returned by L. E. Johnson, marshal of the United States for the district aforesaid, endorsed as follows:

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 14th May, 1870.

I hereby depute John A. Shiell to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

COLUMBIA, *May 16th,* 1870.

I hereby certify that I executed the within process by serving a copy of the same on J. W. Denny, on the 16th day of May, 1870.

JOHN A. SHIELL,
Special Deputy.

And on the 11th day of June, A. D. 1870, the said Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, John Robertson, John Woolly, D. R. De Saussure, and T. J. Coghlan, defendants, by their solicitor, D. H. Chamberlain, at-
67 torney general of the said State of South Carolina, filed in the said court their answer to the bill of complaint of the said Branch, Sons & Co., in words and of the tenor, following:

To the honorable the judges of the fourth circuit of the circuit court of the United States.

The joint and several answers of Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, Conrad Ehrhardt, T. K. Sasportas, J. W. Denny, John Woolly, D. R. De Saussure, and T. J. Coghlan to the bill of complaint of Thomas Branch, a citizen of the State of Virginia; John P. Branch, a citizen of the State of Virginia; Frederick R. Scott, a citizen of the State of Virginia; Thomas P. Branch, a citizen of the State of Georgia, copartners under the name and style of Branch, Sons & Co.

1. The said Reuben Tomlinson, for himself, says that he is auditor of state for the State of South Carolina, and, as such officer, is charged by law with the duty of administering and executing the tax laws of the said State. The said James W. Grace, for himself says,
68 that he is the county treasurer for the county of Colleton, in the said State; the said Fleetwood Lanneau, for himself, says that he is county treasurer for the county of Charleston, in the said State; the said Conrad Ehrhardt, for himself, says that he is the county treasurer for the county of Barnwell, in the said State; the said T. K.

Sasportas, for himself, says that he is the county treasurer for the county of Orangeburg, in the said State; the said John W. Denny, for himself, says that he is the county treasurer for the county of Richland, in the said State; the said John Woolly, for himself, says that he is the county treasurer, for the county of Edgefield, in the said State; the said D. R. DeSaussure, for himself, says that he is the county treasurer for the county of Kershaw, in the said State; the said T. J. Coghlan, for himself, says that he is the county treasurer for the county of Sumter, in the said State; and that they, and each of them, as such county treasurers, are charged by law with the duty of receiving and collecting all taxes imposed by authority of the said State upon the property located in their respective counties.

69 2. These defendants further say that the South Carolina Rail-Company is a corporation, created by the laws of the said State, doing business and owning property within the limits of the said State, and of each of the counties before named.

3. That by the provisions of article 12, section 2, of the constitution of the said State, it is declared that "the property of corporations now existing or hereafter created, shall be subject to taxation except in cases otherwise provided for in this constitution; and that by the provisions of Article IX, section 1, of the said constitution, it is further declared that "the general assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, except mines and mining claims, the proceeds of which shall alone be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes."

70 4. That the South Carolina Railroad Company, being a corporation created and doing business solely for the purposes of trade and commerce, and the gains and profits therefrom, does not come within any of the exceptions or exemptions from taxation recited in the said constitution, but is subject in all respects under the said constitution to assessment and taxation in the same manner as other property within the said State.

5. That by the provisions of an act of the general assembly of the State of South Carolina, passed September 15th, 1868, and entitled "An act providing for the assessment and taxation of property," in sections 11 to 12, inclusive, recited at length in the said bill of complaint, and to which reference is hereby made for fuller specification, all railroad companies within the said State are required, annually, between the first of September, and twentieth of October, to make return to the auditor of State of their entire property within said State; and also to the county auditor of each county of their entire property within
71 the respective counties of said State, through or into which their road passes, or in which their property is located.

6. That the auditor of state, treasurer of state, secretary of state, comptoller general, and attorney general, are made by law a State board of equalization, whose duty it is to equalize the value of the property of the railroad companies within the State; and that the auditor of state is required to certify to the county auditor of each county in which any railroad, or part thereof, may be located, the valuations of railroad property in said county, as returned to him, with all the additions made to, or deductions from, the valuation of the property of any railroad in said county by the State board of equalization, and the county auditor shall charge the railroad company in the several town-

ships, cities, and incorporated villages of their county, for taxation, with the valuations returned by such company or companies, after adding thereto, or deducting therefrom, the amounts directed by the auditor of state.

72 7. That by the said act, it is further provided, that if any railroad company, or its officers shall fail to make the returns to the auditor of state required by the act, on or before the twentieth day of October, annually, the State board of equalization shall proceed to ascertain the value of said company's road and property, from the best information they can conveniently obtain, and add thereto fifty per centum as penalty, and apportion the same to the several counties, townships, cities, and incorporated villages through or into which said road, or any part thereof, may be located, and the state auditor is directed to certify the same to the several county auditors, who shall place the same on their duplicates for taxation.

8. That the South Carolina Railroad Company failed to make any return of their property for taxation prior to the twentieth day of October, 1869, and that, as by law directed, the State board of equalization did proceed to value the property of the said company, and to add

73 the penalty of fifty per centum thereto, and that the auditor of State did certify the same to the county auditors of the several counties in which the property of the said company is located, and that the said county auditors have placed the same upon their duplicates for taxation.

9. That, by an act of the general assembly of the said State, passed February 28th, 1870, entitled "An act to alter and amend an act providing for the assessment and taxation of property," it is provided as follows, in section 5 thereof, " The collection of taxes shall not be stayed or prevented by any injunction, writ, or order issued by any court or officer, except as provided for in this act, and in the act providing for the assessment and taxation of property aforesaid."

10. That, by the provisions of the said last-named act, it is further declared in sections 6, 7, and 8 thereof that, " Whenever any person or persons charged with taxes upon the books of any tax collector in this State, shall state, in writing, to said collector, that he or they have been erroneously or illegally charged with the same, said collector

74 shall submit to the county auditor a full statement of the facts in the case, which statement shall be forwarded to the state auditor, with such additional information relating thereto as the said county auditor may be able to give, and said tax collector shall not be required to proceed against the party or parties so claiming to have been erroneously or illegally charged with taxes, by distress or otherwise, until the state auditor shall, in writing, direct him so to do. In any action or proceeding against any tax collector in this State, for the purpose of recovering any property or money alleged to have been erroneously or illegally assessed and collected, the party bringing such action or proceeding shall make it appear that a notice, in writing, of the claim on which such suit may be brought, was given to said tax collector in pursuance of the sixth (6th) section of this act; and unless it shall be made to appear that said collector has proceeded contrary to the provisions of this act, the amount recovered in such suit shall not

75 exceed the value of the property or money aforesaid. It shall be the duty of the attorney general of the State to defend any suit or proceeding against any tax collector or other officer, who shall be sued for moneys collected, or property levied on or sold on account of any tax, when the state auditor shall have ordered such collector to

proceed in the collection of any such tax, after notice as aforesaid, or suit brought; and any judgement against such collector or other officer finally recovered, shall be paid in the manner provided in section 81, of the act to provide for the assessment and taxation of property aforesaid."

11. That by the provisions of section 81, last above named, it is declared that "If any taxes charged on any real estate be regularly paid, and such real estate be erroneously returned delinquent, and sold for such taxes, the sale shall be totally void; or if any taxes shall be illegally assessed and collected, when the same shall become known to the county auditor, he shall, on demand of the party interested, submit the mat-
76 ter to the auditor of state; and if the auditor of state approve thereof in writing, the amount paid by the purchaser at such void sale, or the amount so illegally collected, shall be repaid to the party paying the same out of the county treasury, on the order of the county auditor; and so much of said taxes as shall have been paid into the State treasury, shall be refunded to the county treasury, and the county auditor shall retain the same in his next annual settlement, and charge the State therewith."

12. These defendants submit to this honorable court the question of whether or not, by the acts recited and referred to in the said bill of complaint, the South Carolina Railroad Company have such exemption from taxation as is claimed in the said bill of complaint, but whether they have or have not such exemption, these defendants deny that, by the provisions of law above recited, the South Carolina Railroad Company is deprived of her remedy for an unlawful assessment or collection of taxes upon her property. On the contrary, they affirm
77 that a full, complete, adequate, and convenient remedy is given by the said provisions of law before recited, and that this honorable court will not intervene by its writ of injunction, unless it be true, as alleged in the said bill of complaint, that the said South Carolina Railroad Company are without remedy at law.

13. These defendants, further answering, say that if, by the acts of the general assembly referred to in the said bill of complaint, the South Carolina Railroad Company were ever entitled to an exemption from taxation, such exemption cannot be held to prohibit other and subsequent legislatures from recalling or removing such exemption, and that no power resides in the legislative department of a State to extinguish for all time the power of taxation upon which the existence of government itself depends.

And these defendants, having made all needful answer to the said bill of complaint against them, pray to be hence dismissed, with their costs.

78 STATE OF SOUTH CAROLINA,
Richland County:

Personally appeared Reuben Tomlinson, one of the defendants in the foregoing cause, who, on affirmation, says that the matters and things set forth in the foregoing answer are true, to the best of his knowledge and belief.

REUBEN TOMLINSON.

Sworn to and subscribed before me this 31st day of May, 1870.
JOHN HEART,
Notary Public.

And, on the 8th day of June, A. D. 1870, the said South Carolina Rail-

road Company, one of the defendants to the said bill of complaint of Branch, Sons & Co., filed by Porter & Connor, its solicitors, its answer thereto in words and of the tenor following:

THE UNITED STATES OF AMERICA,
District of South Carolina:

To the honorable the judges of the circuit court of the United States for the district of South Carolina, sitting in equity:

79 The answer of the South Carolina Railroad Company, a body corporate in and of the State of South Carolina, to the bill of complaint of Thomas Branch, John T. Branch, Frederick R. Scott, citizens of the State of Virginia, and Thomas P. Branch, a citizen of the State of Georgia, co-partners in trade, under the name and firm of Branch, Sons & Co.

This defendant, reserving to itself all right of exception to the said bill of complaint, for answer nevertheless thereto, saith:

That, by act of the general assembly of the State of South Carolina, ratified the 19th day of December, 1827, a corporate company was authorized for the construction of a railroad or a canal, or a canal and railroad from the city of Charleston to each of the towns of Columbia, Camden, and Hamburg.

That, by act of the general assembly of the State of South Carolina, ratified the 30th day of January, 1828, the foregoing act was amended, and the South Carolina Canal and Railroad Company was incor-
80 porated with power to construct a railroad between Charleston and the Savannah River, at or near Hamburg, and with power and authority to construct branches thereof to Columbia and Camden, and with all the powers, rights, and privileges necessary for the successful completion and operation of said road and its branches, as will appear by reference to said act.

That, in pursuance of the power thus granted, the South Carolina Canal and Railroad Company was duly organized, the capital stock subscribed for and paid up, and a railroad built from Charleston to Hamburg.

That, by act of the general assembly of the State of South Carolina, ratified on the 19th day of December, 1835, the Cincinnati and Charleston Railroad Company was incorporated "for the purpose of establishing a communication, by railroad, between the cities of Cincinnati, in Ohio, and Charleston, in the State of South Carolina;" that said charter was in perpetuity; that the capital stock of said company was subscribed for and paid in, and the charter accepted, and the company duly organized in pursuance thereof, and all acts and things
81 necessary to be done on the part of said company to obtain and secure the benefits of said act of incorporation were duly and truly performed.

That, by act of the general assembly of the State of South Carolina, ratified the 21st day of December, 1836, the name of the corporation was changed from "The Cincinnati and Charleston Railroad Company" to the "Louisville, Cincinnati and Charleston Railroad Company;" and, by act of the general assembly of the State of South Carolina, ratified the 19th day of December, 1843, the name of the corporation was again changed from the "Louisville, Cincinnati and Charleston Railroad Company" to the "South Carolina Railroad Company."

That, on or about the day of 1837, this defendant, then called the Louisville, Cincinnati and Charleston Railroad Company, after negotiation had with the South Carolina Canal and Railroad Company, and the stockholders thereof purchased the capital stock of the South Carolina Canal and Railroad Company, and thereby became the owners of all the estate, property, track, road-bed, and machinery of the
82 said canal and railroad company, and of all the rights and privileges of said company, and thereupon the Louisville, Cincinnati and Charleston Railroad Company made and constituted the track from Charleston to Branchville the "main stem" of its road, and extended the same to Columbia, in pursuance of its power and duty under the charter to establish communication by railroad between the cities of Charleston and Cincinnati; and the purchase by this defendant, then called the Louisville, Cincinnati and Charleston Railroad Company, of the property, rights, and privileges of the canal and railroad company, and the conversion of the same to its use under its charter were with the assent and approval of the general assembly of the State of South Carolina.

That the general assembly of the State of South Carolina, on the 20th day of December, 1842, ratified an act entitled "An act to unite the South Carolina Canal and Railroad Company and the Louisville, Cincinnati and Charleston Railroad Company into one corporation;" but, as said act contained no provision excepting said corporation from
83 the operation of the 41st section of the act of 1841, the said corporation declined to accept the same, and, on the 19th day of December, 1843, an act was ratified by the general assembly of the State of South Carolina, under and by virtue of which the name of the Louisville, Cincinnati and Charleston Railroad Company was changed to the South Carolina Railroad Company; and in and by said act it was further provided, "That whenever the written consent of all the stockholders of the South Carolina Canal and Railroad Company shall have been obtained, the said South Carolina Canal and Railroad Company shall be merged in the said South Carolina Railroad Company, and thereupon and thereafter all the rights, privileges, and property belonging to the said South Carolina Canal and Railroad Company shall be vested in the said South Carolina Railroad Company, and the said South Carolina Railroad Company shall be liable for all the debts and contracts of the said South Carolina Canal and Railroad Company; and the stock and property of the said South Carolina Railroad Com-
84 pany shall be subject to the same liens and charges to which the stock and property of the said South Carolina Canal and Railroad Company may be liable, and in the same relative order in which the said liens and charges now stand.

And in and by said act of 1843, and in all other acts thereafter passed relating to said corporation, the said corporation is expressly excepted from the provisions of the 41st section of the act of 1841, which provides that every charter of incorporation thereafter granted, renewed, or modified, (unless the act granting such charter, renewal, amendment, or modification, shall in express terms except it,) shall at all times remain subject to amendment, alteration, or repeal, by the legislative authority.

And the defendant further shows to the court that, by the 19th section of the charter of the South Carolina Railroad Company, it was provided "That the said company may construct branches of their road, provided said branches shall not conflict with any chartered rights existing at the time of their construction: And provided,

85 That they shall be attended with no exclusive privileges, except the exclusive right of transportation of goods, wares, merchandise, produce, and persons, thereon, subject to the rates hereinafter mentioned."

That, by act of the general assembly, ratified the 18th day of December, 1844, the South Carolina Railroad Company was authorized to open a subscription for new stock in the capital of said company, to be employed in the construction of a branch of their railroad to the town of Camden; that the said subscription was opened and the stock subscribed for, and the road constructed to Camden.

That, by the 32d section of the charter of the South Carolina Railroad Company, it was provided "That the said company may purchase, have, and hold, in fee, or for a term of years, any lands, tenements, or hereditaments, which may be necessary for the said road, or any branch or appurtenance thereof, or for the erection of depositories, storehouses, houses for the officers, servants or agents of the company, or for workshops or founderies, to be used for the said company, or for pro-

86 curing timber, stone, or other materials necessary to the construction of the road, its branches or appurtenances, or for effecting transportation thereon, and for no other purpose whatever."

And that, by the 43d section of the charter, it was provided "That the capital stock in the said company, the dividends thereon, and all the property and estates, real and personal, belonging to the said company, shall be forever exempt from taxation in each and every of the said States of South Carolina, North Carolina, Tennessee, and Kentucky. And it shall not be lawful for either of the said States, or any corporate, municipal, police, or other authority thereof, or of any town, city, county, or district thereof, to impose any tax on such stock or dividends, property or estates: Provided, That the said stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation by the State, in common with other money at interest, and interest thereon."

And the defendant further shows to the court that at no time since its incorporation, has any tax or assessment been laid by any

87 State or municipal authority on the real or personal property of said corporation, but that the entire exemption of said corporation from taxation on its real and personal property has been uniformly conceded by the State and all municipal bodies.

That, in 1867 the state treasurer attempted to levy a tax on the gross income of the corporation, under an act of the general assembly, passed the 21st December, 1866, imposing a tax on the gross income of all railroads not exempted by law; but said levy was stayed by prohibition, and, on appeal therefrom, the supreme court of the State decided that the stock of the corporation was exempted by law, and that the exemption of the stock from taxation exempted also the gross income.

And the defendant, further answering, shows to the court that, notwithstanding that "the capital stock, the dividends thereon, and all the property and estate, real and personal, belonging to said company, are forever exempt from taxation by the charter of said company,

88 the real and personal property in the State of South Carolina, belonging to said company, has been valued by the State board of equalization, under the tax act of 1868, at $5,916,000 00, and $2,958,000 00. A penalty of fifty per cent. has been added thereto by said board, because the defendant failed to return the said property for taxation. And a tax of per cent. has been assessed on the aggre-

gate value thus ascertained, which said tax amounts to $. And the treasurers for the counties of Charleston, Colleton, Barnwell, Edgefield, Orangeburg, Richland, Kershaw, and Sumter, have been instructed by the proper authorities to collect said tax—and are about so to do—and to sell the real and personal property of the defendant to pay said tax. All which proceedings, done and contemplated, are in violation of the rights and privileges granted to the defendant in its charter, and in violation of article 1, section 10, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts; but that, nevertheless, there
89 is no legal remedy left to this defendant, whereby it can protect its rights and resist the illegal assessment, taxation, and sale of its property; for, on the 1st day of March, 1870, the general assembly of the State of South Carolina, passed an act entitled "An act to alter and amend an act entitled An act to provide for the assessment and taxation of property," the fifth section of which act provides that "the collection of taxes shall not be stayed or prevented by any injunction-writ or order, issued by any court or officer, except as provided for in the act, and in the act to provide for the assessment and taxation of property aforesaid." And this defendant avers that neither in the act to provide for the assessment and taxation of property, nor in the act amendatory thereof, is any remedy or process given whereby the enforcement and collection of an illegal tax can be stayed or prevented.

That, before the institution of this suit, the complainants ap-
90 plied to this defendant to know whether the corporation, this defendant, had taken or intended to take any legal proceedings to resist the enforcement and collection of the tax aforesaid. That this defendant submitted the question of its legal rights in the premises, and the proper mode of protecting the same to its solicitor, and was advised that a perpetual exemption of the property of the company from taxation was granted to the company by the act of incorporation, and that no subsequent legislation could alter or impair the obligation of the contract.

That the legal rights of the company existed unimpaired, but that the act of the legislature, passed March 1st, 1870, prohibited the courts of the State from issuing any of the preventive processes previously known to the law, and of use in the State, and deprived the defendant of all legal modes of staying or preventing the collection of the tax, and that defendant would be obliged to pay the tax or submit to a sale of its property. That thereupon the directors of the South Carolina Railroad Company declined to take any legal proceedings, and so notified
91 the complainants.

And the defendant prays to be hence dismissed with its reasonable costs and charges in this behalf incurred.

PORTER & CONNER,
Def't's Solicitors.

STATE OF SOUTH CAROLINA,
County of Charleston:

Personally appeared before me, Alfred Tyler, and deposeth that he is vice-president of the S. C. R. R. Co., the def't, and that the matters stated in the foregoing answer are true to the best of his knowledge and belief.

ALFRED TYLER,
Vice-President.

Sworn to before me this 8th day of June, 1870.

L. C. HENDRICK,
Notary Public.

And, on the 6th day of July, A. D. 1870, the said Branch, Sons & Co., by Magrath & Lowndes, their solicitors, filed in the said court their replication to the aforesaid answers of Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, D. R. DeSaussure, T. J. Coghlan, and of the
92 South Carolina Railroad Company, in words and of the tenor following:

In the United States court. Fourth circuit. In equity.

BRANCH, SONS & CO.
vs.
REUBEN TOMLINSON ET AL.

These repliants, saving and reserving to themselves, all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the said defendants' answer, for replication thereto, say, that they do & will aver, maintain, & prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant; and that the answer of the said defendant is uncertain, evasive, and insufficient in law to be replied to by these repliants, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto by these repliants, *unto* & not herein & hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is
93 true. All which matters & things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct; & humbly pray, as in and by their said bill they have already prayed.

MAGRATH & LOWNDES,
Solicitors.

At the said April term, A. D. 1871, came again into court the parties aforesaid, by their solicitors aforesaid, and thereupon the court proceeded to hear and determine the issues between them upon the said several pleadings hereinbefore set forth, and also upon the following evidence introduced by the said South Carolina Railroad Company, the same being extracts made from the reports of the directors made to the annual meeting of the stockholders of the South Carolina Canal and Railroad Company, and of the Louisville and Cincinnati and Charleston Railroad Company.

94 *Semi-annual report of the direction of the South Carolina Canal and Railroad Company, July* 10, 1837.

* * * * * * * *

The directors of the Louisville, Cincinnati and Charleston Railroad Company, residing in Charleston, have asked and had a conference with a committee of the board of this company on the subject of connecting the two roads.

A report on this subject is annexed, and at the disposal of the company. * * * * * *

* * * * * * *

REPORT.

The committee to whom was referred a communication from the directors of the Cincinnati Railroad Company in relation to the terms upon which the said company would unite their interests with the Charleston and Hamburg Railroad Company, beg leave to report:

That a conference was held by your committee wth Gen'ls Hayne and Hamilton, and Mitchell King, esq., who appeared on behalf of the Cincinnati Company.

95 Your committee are of opinion that the Cincinnati Company should pay each stockholder of the Charleston and Hamburg company $125 per share (both old and new subscription;) should assume all responsibilities, and be entitled to all rights; that for every share so purchased by the Cincinnati Company of a stockholder in the Charleston and Hamburg Company, the said stockholder shall subscribe for a share in the Cincinnati Company, and pay down the sum of five dollars. * * * * * * *

Semi-annual report, 31 Dec'r, 1837, of the South Carolina Canal & Railroad Company. * * * *

"The committee appointed in July last to confer with the stokholders individually, respecting the sale of their shares in this company to the Louisville, Cincinnati and Charleston Railroad Company, have reported to an adjourned meeting, that they had obtained the sanction of a large majority to a sale of their stock, on the following terms:

"$125 per share on the old stock, and $25 per share advance on the new stock, payable in, for every share we sell, one share in the L., C. & C. Company stock, with $5 paid thereon, and for the balance,

96 one-third in cash, one-third in one year, and one-third in two years, with interest from date of transfer, secured by a mortgage of the property."

"To which that company, by its president, has agreed."

* * * * * * *

Semi-annual report So. Ca. Canal & Railro. Co., to July, 1838.

"Since the annual meeting in January last, the arrangement then reported for the sale of the stock of this company to the Louisville, Cincinnati and Charleston Railroad Company, has been almost entirely effected; 19,217 shares having been up to this time transferred, leaving only 783 yet held by individual stockholders in this company.

* * * * * * *

First annual report, Oct., 1837, Louisville, Cincinnati & Charleston R. R. Co.

* * * * * * *

"The next point to which the special attention of the directors has been called by the stockholders, is embraced in the report of the committee on routes, which was adopted at the meeting in January last, and which directs an inquiry into the subject of forming a connexion with the Charleston and Hamburg Railroad.

* * * * * * *

97 "From a conference held by the president and a portion of the directors, with a committee of the directors of the Charleston and Hamburg Railroad, we were induced to believe that difficulties

might exist in attempting to form any connexion with that road, short of an entire union of interests, and that this could be best effected by a purchase of the road with all its chartered rights and privileges.

* * * * * * *

"The resolutions hereto annexed, which have been unanimously adopted by this board, embody our views, and with the above report and accompanying documents, are respectfully submitted to the consideration of the stockholders."

RESOLUTIONS.

* * * * * * *

"*Resolved*, That the connexion of our road with that of the South Carolina Canal and Railroad Company, either by purchase or otherwise, is extremely desirable, and that, in our opinion, a committee of the stockholders should be appointed to treat with the agents of that company, expected here, to ascertain on what terms such connexion can be formed, and to recommend the proper measures to be adopted on the subject."

98 At a meeting of the stockholders, held Flat Rock, N. C., on 16 Oct., 1837, the annual report of the president & directors was, on motion of Chan. Harper, "referred to a committee of thirteen, to consider and report thereon."

REPORT OF THE COMMITTEE.

* * * * * * *

"The fourth resolution of the board of directors is that of greatest importance, on which opinions are most likely to be divided, and which will engage most of the attention of the stockholders.

"Your committee, after the fullest consideration which they have been able to give it, recommend the adoption of that resolution. It declares that a connexion of our road with that of the South Carolina Canal and Railroad Company, by purchase or otherwise, is extremely desirable, and recommend that a committee of stockholders be appointed to treat with the agents of that company as to the terms of such connection.

"By the charter of the South Carolina Canal and Railroad Company they have the exclusive privilege of connecting Charleston and Columbia by means of a railroad. The most obvious consideration for this company is that, unless such connexion be formed, they may be pre-

99 vented from carrying their road either through Columbia or so near it as may be virtually an infringement of the charter of the South Carolina Canal and Railroad Company, the route which appears to be the most practicable and advantageous. * * * *

"Then a question arises as to the nature of this connexion. This can only be by a purchase of the whole work or by some arrangement by which that company shall agree to transport on their road the passengers and merchandize destined for Charleston, which may arrive by the Louisville, Cincinnati and Charleston Railroad. But the latter course is subject to the following objections: It might be questioned whether this were a compliance of the terms of the charter. It would not be the constructing of a road between Lexington and Charleston, but between Lexington and Columbia. It would not be a Louisville, Cincin-

nati and Charleston Company, but a Louisville, Cincinnati and Columbia Railroad Company.

* * * * * * *

"Your committee, for the information of the stockholders, have communicated with the agent of the Charleston and Hamburg
100 Railroad Company as to the terms on which the purchase of that road can be effected. The proposal is to sell to this company the road and privileges of the South Carolina Canal and Railroad Company, at an advance of $25 on every share of the stock of that company, payable, one-third in cash, and the remainder in two equal annual instalments; this company assuming the debts and liabilities of the South Carolina Canal and Railroad Company.

"The stock of the company consists of twelve thousand shares of what are called old stock, on which the full amount has been paid in; 12,000 shares, at $125 per share, would amount to $1,500,000. There are also 8,000 shares of what is called new stock, on which $30 per share has been paid.

"An advance of $25 on each of these will make the price $55 per share; 8,000 shares at $55 per share, will amount to $440,000; making the whole price $1,940,000; one-third of this, or $646,666, will be the amount of each instalment.

"But it is proposed on the part of the South Carolina Canal and
101 Railroad Company, that their stockholders, for every share which they own in the stock of that company, shall subscribe one share in the stock of this company, paying an instalment of $5 per share; $5 on 20,000 shares will amount to $100,000, and will diminish the amo nt of the first instalment to (be) paid by this company, to $546,-666.

* * * * * * *

"The above report and resolutions being considered by the stockholders were adopted unanimously, and ordered to be published."

* * * * * * *

In their second annual report, the president and directors say that "The Charleston Railroad which they were instructed to purchase, has been obtained on the terms proposed." * * *

Proceedings of the stockholders of the Louisville, Cincin. & Charleston Ra. Ro. Co., 19, November, 1840.

* * * * * * *

"*Resolved*, That application be made to the legislature of South Carolina for a modification of the charter of this company, so as to
102 reduce the stock of the company, and otherwise settle its affairs upon the following plan; and, upon such authority being granted, the board of directors shall forthwith proceed to carry the plan into operation.

* * * * * * *

"The original design of the company was to construct a road which, by the very number of shares of one hundred dollars each, required by the charter, showed that the legislatures of the several incorporating States deemed eight millions of dollars as the least sum to be subscribed before the work should commence. This number is so decreased that not more than fifty-thousand shares remain in South Carolina.

"By universal consent, therefore, the scheme is now abandoned as inexpedient, and impracticable with the means of the company.

"The purchase of the Hamburg Road and the completion of a branch to Columbia, with some improvements in machinery and labor, are now the only objects contemplated by the company, of which the State of South Carolina is a component part."

* * * * * * *

103 *Proceedings of the stockholders of the Louisville, Cincin. & Charleston Ra. Ro. Co.* 17*th Nov.*, 1841.

Report of the special committee upon the consolidation of the affairs of the two companies, the L., C. & C. R. R. Co., and S. C. C. & R. R. Co., under one board of directors, and one set of officers.

* * * * * * *

"By a further amendment, granted by act of assembly, in 1840, it was provided that the stockholders in the States of Tennessee and North Carolina might release their shares to the company, and receive back the amount of their subscriptions. By this amendment, it was contemplated that the charter of the company should be limited to the State of South Carolina. * * * * *

Proceedings of the stockholders of the Louisville, Cincin. & Charleston R. R. Co. 24 *Nov.*, 1862.

* * * * * * *

Col. Elmore moved the following resolution which was adopted:

"*Resolved*, That the president and directors be authorized to apply, if they deem it advisable, for an amalgamation of the charters of the Louisville, Cincinnati and Charleston Railroad Company, and the South Carolina Canal and Railroad Company."

* * * * * * *

104 25 Nov., 1842.

* * * * * * * * * *

"Col. Elmore then moved that his resolution adopted at the last meeting, which reads thus: 'That the president and directors be authorized to apply to the legislature, if they deem it advisable, for an amalgamation of the Louisville, Cincinnati, and Charleston Railroad Company and the South Carolina Canal and Railroad Company' be expunged; which was adopted."

* * * * * * * * * *

Proceedings of the stockholders of the Louisville, Cincin., & Charleston Ra Ro. Company, 29 & 30 *November*, 1843.

29 November, 1843.

* * * * * * * * * *

Mr. Mazyck offered the following resolutions:

Resolved, That the stockholders of this company do not accept the charter proffered by the act of the legislature passed at the last session.

Resolved further, That the president and directors be authorized and instructed to petition the legislature to change the name and style of this company to the South Carolina Railroad Company; and also, to provide for merging the South Carolina Canal and Railroad Com-

105 whenever the consent of all the stockholders in that company

shall have been obtained, vesting all the rights, privileges, and property of that company in this, and makeing this company liable for all debts and contracts of that company; and also, to grant to this company the exclusive privilege of building and keeping up bridges across Savannah River at Augusta, and to except this company out of the provisions of the 41st section of the act of seventeenth of December, 1841.

These resolutions were seconded and severally adopted.

And the said court ordered and decreed as follows:

In the circuit court.

BRANCH, SONS & CO.
vs.
REUBEN TOMLINSON, SO. CA. R. ROAD, & others. } Bill for injunction & relief.

This cause comes up to be heard on the pleadings and proofs,
106 &, after hearing counsel,

It is now ordered, adjudged, and decreed that the injunction heretofore ordered to issue be made perpetual.

GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.
HUGH L. BOND.

27TH APRIL, 1871.

107 In equity.

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

The President of the United States of America to the South Carolina Railroad Company:

You are hereby summoned to be and appear before the judges of the Supreme Court of the United States, at the Capitol at Washington, D. C., on the first Monday of December next, then and there to join with Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure, and T. J. Coghlan, in prosecuting an appeal from the decree of this court granting a perpetual injunction against you and the said Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure, and T. J. Coghlan, on the complaint of Thomas Branch, John P. Branch, Frederick R. Scott, Thomas P. Branch, copartners under the name of Branch Sons and Company.

And, also, that you do, within thirty days from the service
108 hereof, file, or cause to be filed, with the clerk of the circuit court for the said district, a notice of severance if you do not desire to be joined with the said Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure, and T. J. Coghlan, as an appellant, in the prosecution of the said appeal.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in said South Carolina district, the

tenth day of April, 1871, and in the ninety-fifth year of the sovereignty and independence of the United States of America.

D. H. CHAMBERLAIN,
For Appellants.

D. T. CORBIN,
Of Counsel.

Teste:
(Signed) DANIEL HORLBECK,
C. C. C. U. S. for S. C.

Service of the within acknowledged this 7th June, 1871.
(Signed) PORTER & CONNER,
Sol'c'rs of S. C. R. R. Co.

109 *Notice of severance.*

THE UNITED STATES OF AMERICA,
District of South Carolina:

BRANCH, SONS AND COMPANY
vs.
REUBEN TOMLINSON, THE SOUTH CAROLINA Railroad Company, et al.

The South Carolina Railroad Company, one of the defendants in the above-entitled cause, upon whom citation has been served to join with Reuben Tomlinson and others, appellants, in prosecuting an appeal from the decree of the circuit court of the United States for the district aforesaid in the above-entitled cause, hereby file in said circuit court their notice that they are content with the decree of the circuit court, and do not appeal therefrom, and do hereby sever from their co-defendants on said appeal.

PORTER & CONNER,
Solicitors for S. C. R. R. Co.

110 *Order of severance.*

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

REUBEN TOMLINSON, JAMES W. GRACE, ET AL., appellants,
vs.
BRANCH, SONS & CO., APPELLEES.
In equity.

On reading the summons to the South Carolina Railroad Company to become a party to the appeal in this case from the decree entered on the 27th day of April, 1871, and the notice of the said company declining so to do, on motion of D. H. Chamberlain, esquire, solicitor for appellants,

Ordered, that said appellants, Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure, and T. J. Coghlan, have leave to appeal from said decree without joining said South Carolina Railroad Company with them as appellants.

July 10th, 1871.
(Signed) GEO. S. BRYAN.
U. S. Judge S. C. Dist.

111

And now here, to wit, the 10th day of July, A. D. 1871, the said Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure, and T. J. Coghlan, presented their petition to the said court praying that an appeal be allowed them from the decree aforesaid, so rendered as aforesaid, to the Supreme Court of the United States, which appeal was duly allowed. The said petition is in words and of the tenor following:

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

In equity.

THOMAS BRANCH, JOHN P. BRANCH, AND FREDerick R. Scott, citizens of the the State of Virginia, and Thomas P. Branch, a citizen of the State of Georgia, copartners under the name and style of Branch, Sons & Co.,
against
112 REUBEN TOMLINSON, A CITIZEN OF THE State of South Carolina, The South Carolina Railroad Company, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure, and T. J. Coghlan, citizens of the State of South Carolina. } Appeal.

To the honorable the judges of the circuit court for the district of South Carolina:

The humble petition of Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure, and T. J. Coghlan, showeth:

1. That, by the decree dated the 27th day of April, A. D. 1871, in the above-mentioned cause, it was ordered that the decree of injunction theretofore granted, restraining your petitioners from proceeding to enforce the collection of the taxes levied on the property of the said South Carolina Railroad Company, &c., be made perpetual.

113 2. That the said order of the said court, dated as aforesaid, is, as your petitioners are advised and humbly submit, erroneous, and the same ought to be reversed.

Your petitioners therefore humbly pray that an appeal may be allowed from the said decree to the Supreme Court of the United States.

D. H. CHAMBERLAIN,
Solicitor for Petitioners.
D. T. CORBIN, *Of Counsel.*

Appeal allowed as prayed for.
By the court:
[SEAL.] DAN'L HORLBECK,
C. C. C. U. S. for So. C'a.

114 *Waiver of security.*

REUBEN TOMLINSON AND OTHERS, APPELLANTS,
v.
BRANCH, SONS & CO., APPELLEES.

The appellees hereby consent that the appellants may appeal to the

Supreme Court of the United States from the decree entered in the case of Branch, Sons and Company against Reuben Tomlinson, the South Carolina Railroad Company, and others on the twenty-seventh (27th) day of April, 1871, without security.

MAGRATH & LOWNDES,
Sol'rs for Branch, Sons & Co.

June 7th, 1871.

115 UNITED STATES OF AMERICA,
South Carolina District:

I, Daniel Horlbeck, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing is a true transcript of the record in the case of Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch against Reuben Tomlinson, The South Carolina Railroad Company, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure and T. J. Coghlan.

In witness whereof I have hereunto set my hand, and the seal of the said court, at Charleston this twenty-sixth day of July, A. D. 1871, and in the ninety-sixth year of the sovereignty and independence of the United States of America.

[SEAL.]

DAN. HORLBECK,
C. C. C. U. S. for S. C.

116 UNITED STATES OF AMERICA, *ss:*

To Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch, greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States to be holden at Washington, on the first Monday of December next, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States, for the district of South Carolina, wherein Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Woolly, R. D. DeSaussure, and T. J. Coghlan are appellants, and you are appellees, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand this tenth day of July, A. D. 1871.

GEO. S. BRYAN,
U. S. Judge, Dist. of S. C'a.

117 U. S. circuit court, S. C. district. Tomlinson et al., appellants, v. Branch, Sons & Co., appellees. Citation. D. H. Chamberlain, att'y gen'l S. C., for D. T. Corbin, of counsel.

(Indorsed:)

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 7th Oct., 1871.

I hereby depute S. D. Shannon special deputy to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

——— ——, 186 .

I hereby certify, that I executed the within process by personal service upon Mr. Magrath, j'r, of the firm of Magrath and Lowndes, on the 7th day of Oct., 1871.

S. D. SHANNON,
Special Deputy.

(Indorsement on cover:) No. 352. Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Wo'lly, R. D. DeSaussure, T. J. Coghlan, appellants, vs. Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch. S. Carolina C. C. U. S. Filed 17th October, 1871.

Supreme Court of the United States.

No. 126

REUBEN TOMLINSON ET AL.

vs.

THOMAS BRANCH ET AL.

Personally came Solomon L. Hoge, Comptroller General of the State of South Carolina, before me, and made oath that, as it appears upon the records of the office of the Comptroller General of the said State, the amount of taxes levied for state and county purposes upon the property of the South Carolina Railroad Company for the year A. D. 1869, is eighty-eight thousand seven hundred and forty ($88,740) dollars, and that the said amount is involved in the cause above stated, now pending in the Supreme Court of the United States.

S. L. HOGE.

Sworn to and subscribed before me, this 28th day of January, A. D. 1873.

T. M. WILKES,
U. S. Com., So. Ca. Dist.

——— ——, 186 .

I hereby certify, that I executed the within process by personal service upon Mr. Magrath, j'r, of the firm of Magrath and Lowndes, on the 7th day of Oct., 1871.

S. D. SHANNON,
Special Deputy.

(Indorsement on cover:) No. 352. Reuben Tomlinson, James W. Grace, Fleetwood Lanneau, L. D. Hallonquist, T. K. Sasportas, J. W. Denny, John Wo'lly, R. D. DeSaussure, T. J. Coghlan, appellants, vs. Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch. S. Carolina C. C. U. S. Filed 17th October, 1871.

Supreme Court of the United States.

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S. L. HOGE.

Sworn to and subscribed before me, this 28th day of January, A. D. 1873.

T. M. WILKES,
U. S. Com., So. Ca. Dist.

Supreme Court of the United States,

DECEMBER TERM, 1872.

REUBEN TOMLINSON, ET AL., Appellants,

vs.

BRANCH, SONS & CO.

THE CITY COUNCIL OF CHARLESTON, ET AL.

vs.

BRANCH, SONS & CO.

BRIEF OF PORTER & CONNER
FOR APPELLEES.

Walker, Evans & Cogswell, Law Stationers, Charleston, S. C

IN THE SUPREME COURT.

REUBEN TOMLINSON, et. al., Appellants, *vs.* BRANCH, SONS & CO.,	Appeal from Fourth Circuit, District of South Carolina.
THE CITY COUNCIL OF CHARLESTON, GEORGE ADDISON AND STEPHEN THOMAS, Appellants, *vs.* BRANCH, SONS & CO.	Appeal from Fourth Circuit, District of South Carolina.

STATEMENT.

The appellants levied a tax upon the property of the South Carolina Railroad Company under the Act of the State of 1868. The defendants below claim an exemption under the 43d section of the Act of 1835, (the charter) which provides that the capital stock in the said "company, "the dividends thereon and all the property and estates, real "and personal, belonging to the said company shall be forever "exempt from taxation in each and every of the said States of "South Carolina, North Carolina, Tennessee and Kentucky; and "it shall not be lawful for either of the said States, or any cor- "porate, municipal, police or other authority thereof, or of any "town, city, county, or district thereof, to impose any tax on "such stock or dividends, property or estates."

The validity of the exemption is the issue in the cause.

POINTS AND AUTHORITIES OF APPELLEE.

1. That the exemption from taxation has been clearly and specifically relinquished by the State. This is manifest from the words of the Act. (8 Statutes, 409.)

2. That the charter is a contract; that the State may by contract surrender the right of taxation, as to the property of a corporation, and that a succeeding Legislature has not the power to impair the obligation of the contract, have been so often decided that it is unnecessary to repeat the reasons or enumerate the authorities. Wilmington Railroad *vs.* Reid, 18 Wall., 266.

3. That the prohibition applicable to a succeeding Legislature equally applies to a succeeding Constitution.

"A change of constitution cannot release a State from con-
"tracts made under a constitution, which permits them to be
"made."

Dodge *vs.* Woolsey, 18 How., 360.
S. P., Mechanics' and Traders' Bank *vs.* Thomas, 18 How., 384.
Home of the Friendless *vs.* Rouse, 8 Wall., 438.

The question now comes, of the application of these legal principles to the facts of the case.

It is not denied

That all the property sought to be taxed belongs to the South Carolina Railroad Company; that the corporation formerly called the Louisville, Cincinnati and Charleston Railroad Company is now the South Carolina Railroad Company.

That under the 43§ of the charter of the company, "all the property belonging to the said company is exempt from taxation."

The conclusion would seem to be irresistible that the property is exempt. With facts at will it would be difficult to frame a clearer case of exemption.

Unable to deny or construe away, the exemption power, appellant seeks to limit its operation, and claims that as part of the property belonging to the South Carolina Railroad Company was purchased from the Canal and Railroad Company, it is held under and governed by the charter of that company.

It is conceded that if the Canal and Railroad Company still existed as a corporation, and this was a proceeding to tax its property, the argument of the appellants would be conclusive. But the tax is imposed on the South Carolina Railroad Company, and levied on its property and the question is not

what the Canal and Railroad Company was liable to, but what is the South Carolina Railroad Company liable to.

The argument of appellant assumes as true, all the facts essential to its validity, viz: the existence of the charter of the Canal and Railroad Company, and of property governed by that charter. If the charter does not exist, it is idle to talk of its governing property; and if there is no property of the Canal and Railroad Company in existence, it is difficult to perceive how the charter can affect it.

There is nothing in evidence to show that there has been a corporation, a corporator, a corporate act, or corporate property, of the Canal and Railroad Company for 30 years.

We propose to show, by the history of the road itself, the acts of the Legislature and the decisions of the highest court of the State:

1st. That the South Carolina Railroad Company is the Louisville, Cincinnati and Charleston Railroad Company under a new name.

2d. That all the property held by the South Carolina Railroad Company, is held under the charter of the Louisville, Cincinnati and Charleston Railroad Company, (Act of 1835,) and governed by it.

3d. That the property purchased from the Canal and Railroad Company, was acquired under powers granted in the charter of the Louisville, Cincinnati and Charleston Railroad Company, and became the property of the Louisville, Cincinnati and Charleston Railroad Company, held under and subject to its charter.

4th. That property, rights and privileges can no longer be held under charter of the Canal and Railroad Company, for, by Act of the Legislature, the charter of the Canal and Railroad Company was extinguished, and that the very object of extinguishing it was to place the entire property of the South Carolina Railroad Company under the charter of the Louisville, Cincinnati and Charleston Railroad Company.

To prove this, it is necessary to show what the South Carolina Railroad Company is; how and when it became a corporation, and what are its privileges:

In 1828, the South Carolina Canal and Railroad Company was chartered, with the exclusive privilege of connecting Charleston with Hamburg, Columbia and Camden. (8 Statutes, 354, 355.)

Cincinnati In 1835, the ~~Louisville~~ and Charleston Railroad Company was incorporated with extensive powers and privileges; the State itself being a large stockholder. Among the powers and privileges were the following: Act of 1835, (8 Statutes, 409.)

Section 1, enacts "That for the purpose of establishing a communication by railroad between the cities of Cincinnati, in the State of Ohio, and Charleston, in the State of South Carolina, through the States of Kentucky, Tennessee, North and South Carolina, the formation of a company to be called *The Cincinnati and Charleston Railroad Company*, is hereby authorized, which, when formed, shall have corporate existence in perpetuity," in each of the States aforesaid.

§ 19. "The said company may construct branches of their "road; *provided*, such branches shall not conflict with any "chartered rights existing at the time of their construction; "and *provided*, that they shall be attended with no exclusive "privileges, except the exclusive right of transportation of "goods, wares, merchandise, produce, and persons thereon; "subject to the rates hereinafter mentioned."

§ 32. "The said company may purchase, have and hold, in "fee, or for a term of years, any lands, tenements or hereditaments which may be necessary for the said road, or any branch "or appurtenance thereof, or for the erection of depositories, "storehouses, houses for the officers, servants or agents of the "company, or for workshops or founderies, to be used for the "said company, or for procuring timber, stone, or other materials necessary to the construction of the road, its branches or "appurtenances, or for effecting transportation thereon, and for "no other purpose whatever."

§ 43. "That the capital stock in the said company, the dividends thereon, and all the property and estates, real and personal, belonging to the said company, shall be forever exempt "from taxation, in each and every of the said States of South "Carolina, North Carolina, Tennessee and Kentucky; and it

"shall not be lawful for either of the said States, or any corpo-
"rate, municipal, police, or other authority thereof, or of any
"town, city, county or district thereof, to impose any tax on
"such stock or dividends, property or estates; *provided*, that the
"said stock or dividends, when the said dividends shall exceed
"the legal interest of the State, may be subject to taxation by
"the State, in common with other money at interest, and in-
"terest thereon."

In 1836, its name was changed to that of the Louisville, Cincinnati and Charleston Railroad Company. § 1. Act of 1836, 8 Statutes, 96.

The object and purpose of the corporation was the construction of a railroad from Charleston to Cincinnati.

At the outset this difficulty arose, that the proper line of communication between Charleston and Columbia was pre-occupied by the Canal and Railroad Company, under its exclusive charter. As early as January, 1837, the stockholders of the Louisville, Cincinnati and Charlotte Railroad Company, directed an inquiry into the subject of forming a connection with the South Carolina Canal and Railroad Company. *See Record, p.* 31.

Conferences were held by committees of the two roads. *See Record, p.* 32.

The subject of a connection of the two roads was embraced the annual report of the President and Directors of the Louisville, Cincinnati and Charleston Railroad Company, made in October, 1837, to the stockholders. The report was referred to a special committee of Thirteen, which reported:

"By the charter of the South Carolina Canal and Railroad Company, they have the exclusive privilege of connecting Charleston and Columbia by means of a railroad. The most obvious consideration for this company is that, unless such connection be formed, they may be prevented from carrying their road either through Columbia, or so near it as may be virtually an infringement of the charter of the South Carolina Canal and Railroad Company, the route which appears to be the most practicable and advantageous. * * * * *

"Then a question arises as to the nature of this connection. This can only be by a purchase of the whole work, or by some

arrangement, by which that company shall agree to transport on their road the passengers and merchandise destined for Charleston, which may arrive by the Louisville, Cincinnati and Charleston Railroad. But the latter course is subject to the following objections: It might be questioned whether this were a compliance of the terms of the charter. It would not be the constructing of a road between Lexington and Charleston, but between Lexington and Columbia. It would not be a Louisville, Cincinnati and Charleston Company, but a Louisville, Cincinnati and Columbia Railroad Company.

* * * * * * * *

"Your committee, for the information of the stockholders, have communicated with the agent of the Charleston and Hamburg Railroad Company, as to the terms on which the purchase of that road can be effected. The proposal is to sell to this company the road and privileges of the South Carolina Canal and Railroad Company, at an advance of $25 on every share of the stock of that company, payable one-third in cash, and the remainder in two equal annual instalments, this company assuming the debts and liabilities of the South Carolina Canal and Railroad Company. * * * * * *

"But it is proposed on the part of the South Carolina Canal and Railroad Company, that their stockholders, for every share which they own in the stock of this company, shall subscribe one share in the stock of their company, paying an instalment of $5 per share—$5 on 20,000 shares will amount to $100,000; and will diminish the amount of the first instalment to be paid by this company to $546,666."

* * * * * * * *

The report and resolutions of the committee were unanimously adopted. *See Record, p.* 34.

A year afterwards in their second annual report, the President and Directors of the Louisville, Cincinnati and Charleston Railroad Company, say "that the Charleston Railroad, which they were instructed to purchase, has been obtained on the terms proposed." *See Record, p.* 34.

Turning to the records of the Canal and Railroad Company, we find the same subject under consideration in their reports

and meetings of stockholders. *See Record, p.* 32. And in the semi-annual report, July, 1838, they report that "the arrangement has been almost entirely effected, 19,217 out of 20,000 shares having been up to this time transferred."

When this arrangement was closed, there was not simply the purchase by the Louisville, Cincinnati and Charleston Railroad Company of the property and privileges of the Canal and Railroad Company, and an assumption of its debts, but there was a complete unity and identity of interests. The stockholders of the Canal and Railroad Company became stockholders of the Louisville, Cincinnati and Charleston company. There was no longer corporate property or privileges, or corporate debts, or corporate stock remaining to the Canal and Railroad Company; all had been absorbed and assumed by the Louisville, Cincinnati and Charleston Railroad Company. Nothing remained except the charter, and that survived because only legislative action could extinguish it.

1st. The right on the part of the Louisville, Cincinnati and Charleston Railroad Company to do this, existed under the general provisions of the charter.

The charter contained ample authority to construct a railroad between Charleston and Columbia, and to extend branches thereof. §1, 17 and 19, Act of 1835.

It is not a case where the right to use a property acquired depends upon the charter privileges acquired with the property, for the rights and franchises of the Louisville, Cincinnati and Charleston Railroad Company were larger than those of the Canal and Railroad Company, and covered the same subject matter.

The Louisville, Cincinnati and Charleston Railroad Company could have accomplished, under its own charter, everything which had been done by the canal and railroad company.

It was not a franchise which it needed, but property adapted to its purposes, and which it desired to hold and use under its charter.

The power to acquire and hold property for the construction of a railroad from Charleston to Columbia, or the construction of a branch from Branchville to Hamburg, was as fully given in the charter of the Louisville, Cincinnati and

Charleston Railroad Company as it was in that of the Canal and Railroad Company. Each had equal power, but as to part of the territory included in the grant, the exercise of the power was exclusive in the Canal and Railroad Company.

When the obstacle arising from the exclusive privileges of the Canal and Railroad Company was removed, the right of the Louisville, Cincinnati and Charleston Railroad Company to acquire and hold property was derived from its own charter.

The right came from the Legislature. The Canal and Railroad Company could not give the right; the utmost it could do was to assent to the exercise of it.

To place this beyond question, suppose that the Canal and Railroad Company had waived or forfeited its exclusive privileges, and the Louisville, Cincinnati and Charleston Railroad Company had constructed its entire road, parallel with the Canal and Railroad Company, so far as it extended, under what authority would it have acquired and held property or condemned land for its use? Clearly under its charter. To that, resort would have been had in every instance, to ascertain the existence of the powers it sought to exercise. It is not denied in the argument that the Louisville, Cincinnati and Charleston Railroad Company could have done this with the assent of the Canal and Railroad Company. On the contrary, it is impliedly admitted. (p. 5.)

If then the Louisville, Cincinnati and Charleston Railroad Company could have held and acquired the property under their charter, if purchased from others, why can they not equally acquire and hold it under their charter, when purchased from the Canal and Railroad Company? From whom it purchased, is immaterial—the real question is, had it the right to purchase and hold? The charter answers that.

Suppose there had been no exempting clause in the charter of the Canal and Railroad Company. The moment the property was acquired by the Louisville, Cincinnati and Charleston Railroad Company under its charter, it was exempted from taxation as property "belonging to said company." Can the Louisville, Cincinnati and Charleston Railroad Company be in a worse position because the Canal and Railroad Company had an exemption, than it would have been if the canal company had had no exemption?

And second, the exercise of the right was approved by the Legislature.

In 1837, pending the negotiation between the two companies, the Legislature passed an Act to lend the credit of the State to secure a loan of $2,000,000, to be made by the Louisville, Cincinnati and Charleston Railroad Company. 6 Stat., 571.

The Act provided that on the endorsement of the company's bonds by the State, "the whole estate, property and funds "which the said company may then possess, or shall afterwards "acquire, shall thenceforth stand pledged and mortgaged to the "State * * * * * * in priority and preference of any "other debt which the said company may then or at any other "time owe; *Provided*, that the terms herein contained shall not "be construed to prevent the said company, in case it should "purchase the railroad of the South Carolina Canal and Railroad "Company, from mortgaging the said road to the South Caro-"lina Canal and Railroad Company for any sum not exceeding "two-thirds of the purchase money, and giving the said South "Carolina Railroad Company a lien thereof, in preference to the "mortgage to the State."

The Act further permits the Louisville, Cincinnati and Charleston Railroad Company to sell the unserviceable material of the South Carolina Canal and Railroad Company, "should it purchase the same."

And by Act of 1839, "to provide for an advance by the State on its subscription to the Louisville, Cincinnati and Charleston Railroad Company," it is enacted "that the advance herein directed (of $600,000) is upon the express condition that the incomes which may be received by the Louisville, Cincinnati and Charleston Railroad Company *from the road between Charleston and Hamburg* shall be applied in the first instance to pay the interest, which shall become payable on the bonds of said company guaranteed by the State. 11 Statutes, p. 86.

The Legislature, of course, knew the charter powers of the Louisville, Cincinnati and Charleston Railroad Company.

Is it supposable that it would have authorized the company to purchase and to expend its corporate funds on property which, under its charter, it could not hold?

If the Louisville, Cincinnati and Charleston Railroad Com-

pany could not acquire and hold this property under its charter, then the acquisition of it would have been in excess of the charter powers, and the expenditure of $1,500,000 of corporate funds on the property—an abuse of the franchise. Is it presumable that the Legislature of the State connived at the abuse?

If not, then these acts are either the recognition of an existing power, under the charter, to acquire and hold the property of the Canal and Railroad Company, or they give the power.

That they recognize an existing power is, we think, evident, but whether they are regarded as the one or the other, there is in either case, the legislative authority to the Louisville, Cincinnati and Charleston Railroad Company to acquire and hold the property.

And as the company could not acquire or hold property except under the charter, and for the purposes of the charter, the sanction of the State to the acquisition is the highest evidence that the purchase was within the corporate power of the company; that the property became legally the property of the corporation, and as such exempted from taxation by the charter of the company.

The next legislation to which we ask the attention of the court is the act of 1842. 11 Statutes, 234.

SEC. 1. Incorporates the stockholders of the Louisville, Cincinnati and Charleston Railroad Company, under the name of the South Carolina Railroad Company.

By SEC. 2. The South Carolina Railroad Company was "invested with all the rights and privileges, which have been granted or which now belong to the South Carolina Canal and Railroad Company, and to the Louisville, Cincinnati and Charleston Railroad Company, or to either of them."

SEC. 3. "The company hereby incorporated shall be governed by the same rules and in the same manner as is directed by the amended charter of the Louisville, Cincinnati and Charleston Railroad Company."

SEC. 4. Authorizes the South Carolina Railroad Company to purchase up the outstanding shares of the Canal and Railroad Company; or if that cannot be done, authorizes the Canal and Railroad Company to apportion assets to such shareholders, "and

to surrender up the charter of the said company." "Whereupon all the rights and privileges granted to the Canal and Railroad Company, are hereby declared to be vested in the South Carolina railroad company."

The Louisville, Cincinnati and Charleston Railroad Company declined to accept the Act of 1842, and the Act of 1843 was passed, entitled "An Act to change the name and style of the "Louisville, Cincinnati and Charleston Railroad Company, and "to provide for uniting therewith the South Carolina Canal and "Railroad Company, and for other purposes therein mentioned."

"Whereas, the stockholders of the Louisville, Cincinnati and "Charleston Railroad Company have not accepted the provisions "of an Act, entitled 'An Act to unite the South Carolina Canal "and Railroad Company and the Louisville, Cincinnati and "Charleston Railroad into one corporation,' passed on the nine-"teenth day of December, in the year of our Lord one thou-"sand eight hundred and forty-two; and whereas, also, the said "Louisville, Cincinnati and Charleston Railroad Company have "petitioned to have the name and style of the said company "changed to the South Carolina Railroad Company, and for other "purposes in the petition set forth.

"SEC. 1. *Be it enacted by the Honorable the Senate and House "of Representatives, now met and sitting in General Assembly,* "That the name and style of the Louisville, Cincinnati and "Charleston Railroad Company, be and they are hereby changed "to the South Carolina Railroad Company, which shall hereafter "be the name and style of the said company.

"SEC. 2. That whenever the written consent of all the stock-"holders of the South Carolina Canal and Railroad Company "shall have been obtained, the said South Carolina Canal and "Railroad Company, shall be merged in the said South Carolina "Railroad Company, and thereupon and thereafter all the rights, "privileges and property belonging to the said South Carolina "Canal and Railroad Company, shall be vested in the said South "Carolina Railroad Company, and the said South Carolina Rail-"road Company shall be liable for all the debts and contracts of "the said South Carolina Canal and Railroad Company; and the "stock and property of the said South Carolina Railroad shall

"be subject to the same liens and charges, to which the stock "and property of the said South Carolina Canal and Railroad "Company may be liable, and in the same relative order in "which the said liens and charges now stand.

"SEC. 3. The said South Carolina Railroad Company is hereby "excepted from the provisions of the forty-first section of an Act "entiled 'an Act to incorporate certain villages, societies, and "companies, and to renew and amend certain charters heretofore "granted, and to establish the principles on which charters of "incorporation will hereafter be granted,' ratified on the seven-"teenth day of December, in the year of our Lord one thousand "eight hundred and forty-one; but nothing therein contained "shall be construed, as exempting the said company from the "provisions of the said forty-first section, upon any future "grant, renewal or modification of their charter." 11 Stat., 273.

We have shown that the property and privileges of the Canal and Railroad Company had been acquired by purchase, in 1837, that its stock and stockholders had become absorbed in the Louisville, Cincinnati and Charleston Railroad Company. The charter alone remained. The legal entity. To extinguish that, the Act of 1843 was passed.

In the case cited by appellants, Boston and Lowell Railroad Company vs. Salem and Lowell Railroad Company, 2 Gray, 28, it is said: "In construing this Act of incorporation, we are to bear in mind the time and circumstances under which it was made." Applying that principle to the Act of 1843, we can the more clearly perceive what the Legislature intended.

The grand scheme of a railroad to Cincinnati had failed under the terrible financial revulsion of '38 and '39. All that the Louisville, Cincinnati and Charleston Railroad Company could accomplish had been effected, viz: the purchase of the canal and railroad company, and the construction of the road to Columbia. Every foot of that track could have been as legitimately constructed under one charter as the other. The existtence of two charters, either of which was applicable to the same road, was an anomaly. The entire property and privileges of the Canal and Railroad Company had been purchased by the Louisville, Cincinnati and Charleston Railroad Company and

both charters were under the same control. The State was the largest stockholder in the enterprise. The only remedy was the destruction of one of the charters, and in effecting this, the Act uses the very word, which legally expresses the intent of the Legislature, *merged*, "the annihilation by act of law of the "less in the greater of two vested estates meeting in the same "person." Cruise Dig., title 39, Greenleaf's edition. Vol. 3, p. 563.

It was not the union, amalgamation or consolidation of two corporations, but the merging of one into the other, the annihilation, or, to use the quaint expression of the older cases, the "drowning" of the less in the greater.

To show more clearly that the peculiar phraseology of the Act was the result of careful consideration, we refer to the proceedings of the stockholders in November, 1842, (*see Record, p.* 35.) in which Mr. Adams moved that his resolution adopted at the last meeting for "an *amalgamation* of the Louisville, Cincinnati and Charleston Railroad Company be expunged," which was adopted.

This completes the legislative history of the South Carolina Railroad Company. That it owns a railway connecting Charleston, Hamburg, Columbia and Camden is admitted on all sides. That it is a corporation and holds the property under charter is equally admitted. Where then is its charter?

Not in the Act of 1843, for that Act does not even incorporate it; does not give a single one of the powers necessary to corporate existence. Not in the Charter of the Canal and Railroad Company, for that was extinguished by Act of 1843.

Where then are the corporate powers and franchises to be found? Clearly in the Act of 1835—the charter of the Louisville, Cincinnati and Charleston Railroad Company.

The Act of 1843:

1st. Changed the name. The Louisville, Cincinnati and Charleston Railroad Company became the South Carolina Railroad Company; not a line of its charter altered or erased. It remained the old corporation, under a new name.

2d. It merged the Canal and Railroad Company in the old corporation, now called South Carolina Railroad Company. By this

the corporate existence of the Canal and Railroad Company was destroyed. The charter was extinct and the franchise destroyed. The Legislature might have stopped there, but the Act, out of abundant caution, goes farther.

With the extinction of the charter, fell all the rights and powers of the charter, but as some of these might be of sufficient value to be preserved, the Legislature, out of abundant caution added a clause.

3d. It vested in the South Carolina Railroad Company, all the rights, privileges and property belonging to the Canal and Railroad Company.

It is a cardinal rule of construction to give effect to every word. Now, when the Act says, "all the rights, privileges and property belonging to the said the South Carolina Canal and Railroad Company shall be vested in the said South Carolina Railroad Company," what does the word "vested" mean? The rights, privileges and property had been purchased, with the assent of the Legislature, six years before. The Legislature could neither vest nor divest the ownership. The word "*vested*" was, therefore, not necessary to pass the ownership. Its only operation was to pass the acquired rights, privileges and property under the charter of the South Carolina Railroad Company; to place the tenure of the South Carolina Railroad Company over these rights, privileges and property, after the extinction of the charter of the Canal and Railroad Company, beyond cavil or doubt, by a legislative declaration that they were vested in the company under its charter.

When the Legislation ended, the charter of the Canal and Railroad Company was ~~so~~ extinguished, and not a line of the charter of the Louisville, Cincinnati and Charleston Railroad Company was altered or repealed. That charter covered all the property held by the Louisville, Cincinnati and Charleston Railroad Company, now the South Carolina Railroad Company.

The decisions of the Supreme Court of the State fully sustain this view.

In South Carolina Railroad Company *vs.* Blake, 9 Rich., 228, decided in 1856, the court says:

"The South Carolina Railroad Company, by an Act of 1843, has all the rights and privileges which belonged to either the

South Carolina Canal and Railroad Company, under its charter of 1828, or to the Louisville, Cincinnati and Charleston Railroad Company under the charter of 1835."

Again, (p. 237,) "and all the property and estates of the company are forever exempted from taxation." (1835, § 43.)

In South Carolina Railroad Company *vs.* Columbia and Augusta Railroad Company, 13 Richardson, Equity, 339, decided in 1867, Ch. Carroll says:

"The Act of 1843 changed the name of the Louisville, Cin-
"cinnati and Charleston Railroad Company to the South Carolina
"Railroad Company, and under its provisions the South Carolina
"Canal and Railroad Company became merged, and all its rights
"privileges and property vested in the South Carolina Railroad
"Company. But the Act assuredly in nowise affected the rights
"or privileges of the plaintiffs (the South Carolina Railroad
"Company,) under the charter, to the Louisville, Cincinnati and
"Charleston Railroad Company, except by adding to them those
"of the South Carolina Canal and Railroad Company. Un-
"doubtedly, the operation of the Act was to extend the charter
"of the Louisville, Cincinnati and Charleston Railroad Company
"over all the road possessed by the plaintiffs; that is, to extend
"it in the same sense, and with the same effect, as that charter
"would have extended by its own operation over the road, had
"it been entirely constructed, instead of being purchased, by
"that company. All the rights and immunities conferred by
"that charter subsist unchanged, whether they refer to the
"trunk or the branch of the road. There is no displacement,
"diminution or enlargement of the one by the other."

In another portion of the opinion, speaking of one of the exclusive privileges of the charter of the Louisville, Cincinnati and Charleston Railroad Company, Ch. Carroll says:

"It is indisputable that the exclusive privilege in question
"operated in respect to the Charleston and Hamburg road when
"purchased by the Louisville, Cincinnati and Charleston rail-
"road Company, precisely as it would have done in regard to
"that road, had it been built entirely by that company, under
"its charter." p. 347.

The case went to the Court of Errors, the highest appellate tribunal of the State, and the decision of that court "affirms the decree of the Chancellor upon the question considered by him." p. 363.

In the State *ex relatione* the South Carolina Railroad Company, *vs.* Hood, Treasurer. 15 Richardson's Law Repts., 177, decided in 1868.

The State had, by Act, imposed a tax on the gross income of

all railroads not exempted by law. The South Carolina Railroad Company made no return, and tax execution issued.

The company moved for prohibition. Judge Moses delivering the Circuit opinion, says, quoting the 43 § of the Act of 1835:

"The capital stock of the company, the dividends arising "thereon, and all the property and estates, real and personal, "belonging to it, being exempt from taxation by express "language (unless I find, in the Act of 1866, free from ambiguity "and probable chance of doubt, words which preclude a differ- "ent conclusion,) I cannot hold that the Legislature intended "to include this company as one upon which the enactment "was to operate. p. 179.

"It was contended in opposition to the motion for the pro- "hibition, that the Act of 1843 reduces the privileges, as it "confers only those originally granted to the South Carolina "Canal and Railroad Company, and not those granted to the "Cincinnati and Charleston Railroad Company.

"The Act of 1836, however, only changed the name of the "Cincinnati and Charleston Railroad Company to that of the "Louisville, Cincinnati and Charleston Railroad Company, but "left it with all its powers, rights, privileges and exemptions, "which its charter had previously conferred, and the Act of "1843, also changing the South Carolina Railroad Company, in "no way deprived it of all the rights, franchises, powers and "privileges and exemptions, which the former company by law "enjoyed," and prohibition was ordered, and, on appeal, the motion to reverse the decision of the Circuit Court was refused.

Even if the argument of the appellant could have availed prior to 1843, it cannot now.

Averring, as it does, that a portion of the property of the South Carolina Railroad Company is held under the charter of the Canal and Railroad Company, it necessarily assumes that the charter of the Canal and Railroad Company still exists.

Under such a construction, the South Carolina Railroad Company would hold and govern its property, partly under its own charter, that of the Louisville, Cincinnati and Charleston Railroad Company, and partly under that of the Canal and Railroad Company. But this is exactly what the Act of 1843 was intended to remedy, and did remedy, by the extinction of the charter of the Canal and Railroad Company. "Three things are "to be considered in the construction of all statutes—the old "law, the mischief, and the remedy." 1 Blackstone, 87.

The construction of appellant would be virtually a repeal of the Act of 1843; it would destroy the remedy, and leave the old law and the mischief in full force.

The Act of 1843 is not open to such construction. It is an exceptionally clear and precise piece of legislation. It merges the Canal and Railroad Company in the South Carolina Railroad Company and extinguishes it.

The case of the Philadelphia, Wilmington and Baltimore Railroad *vs.* Maryland, 10 How., 376, cited by appellant, does not apply to this case. The distinctions are obvious. There, there was a union of corporations, by Act of the parties, each bringing its own property—a species of corporate copartnership; here, there is extinction of one corporation by legislative Act merging it into the other. There, the attempt was to imply an exemption where none was given by the Legislature, to import into the charter a privilege which the Legislature had not granted to the corporation; here the effort is to take away an exemption specifically granted. There, distinct charters of different States covered the separate parts of the joint property; here, the entire road was owned by one corporation and covered by one charter. There the effort was to extend the privilege of one partner over the property of the firm. Here the effort is to diminish the privilege of the ~~partner~~ sole owner over his own property.

The case before the court in facts and principle more closely resembles State *vs.* Norwich and Worcester Railroad, 30 Conn., 290.

The defendant corporation was organized with a capital of one million by the name of the Boston, Norwich and New London Railroad Company, and its capital stock was exempt from taxation until the tolls collected should afford a dividend of six per cent. on the capital stock. The capital stock was increased by adding $1,450,000. Held, that the original exemption applied to the increased as well as to the original capital.

Per curiam: "In 1836 the corporation was united with a similar one incorporated by the legislature of Massachusetts, and the name changed to that by which it is now distinguished. Referring to the resolutions of that year we find nothing affecting or impairing any of the provisions of the original charter. It introduced the stockholders of the Massachusetts company as stockholders of this company, and so far forth added to the members of the company and the amount of the capital stock,

and it changed the name by which the company should thereafter be known.

* * * * * * * * * *

It is apparent that it was the intention of the legislature to merge the Massachusetts corporation in the Connecticut one by making the stockholders of the former, stockholders of the latter, and increasing the capital without in any respect impairing or changing any of its charter powers or privileges. It also appears that by several subsequent resolutions of the General Assembly the capital stock was increased to more than double the original amount. Referring to these resolutions we find nothing directly or expressly repealing or modifiying any of the original provisions of the charter, or any which are in any manner repugnant to the provisions of the §17 of the charter, and that section must be taken to be in full force and applicable to the additions made to the capital stock, unless the contingency mentioned in it has happened."

Let us test the validity of appellants argument by regarding it from another stand point.

We have already cited the charter, and the decision of the highest court of the State, that the capital stock of the South Carolina Railroad Company was exempt from taxation. Now the capital stock is but the representative of the property of the corporation. Whether the property or the stock is taxed is immaterial. The result is the same, the burthen is imposed upon the corporation.

In the language of the court in Gordon *vs.* Appeal Tax court, 3 Howard, 147; "the aggregate could not be taxed without its having the same effect upon the parts, that a tax upon the parts would have upon the whole."

There is no stock of the Canal and Railroad Company in existance to be taxed. All the property represented by that stock is now represented by the capital stock of the South Carolina Railroad Company.

If then the argument of appellant is sound, this conclusion follows: that although the capital stock cannot be taxed, the property represented by that stock can be. Such conclusion would destroy the value of the exemption. The exemption would no longer relieve the corporation from the burthen of

taxation, but only give to it the choice of the name under which the burthen should be borne.

Apart from this, the conclusion is repugnant to the authorities.

The cases sustain these propositions:

1st. That the exemption of property exempts the capital; and *e converso.*

2d. That the exemption of capital exempts the property in which the capital is invested.

Under the first it was held in the Bank Tax case, 2 Wallace, 200: "That the tax on the capital of the bank is a tax on the property of the institution," and the property being exempt the tax on the capital is void.

S. P., Bank of Commerce *vs.* New York city, 2 Black, 620,

Under the second it was held in New Haven *vs.* City Bank. 31 Conn., 106, that when the capital stock of a bank is exempt from taxation its property is equally exempt.

Referring to the argument advanced that the stock should be exempt, while the property should be liable, the court say "such a reservation of right would render the promised exemption a worthless figment, (page 111.)

And in the State Bank *vs.* City Council of Charleston, 3 Richardson, Law 342, it was held that the exemption of the capital stock exempted the property. "To be intended for anything else than a mockery, an exemption of a bank from taxation must extend to something else than the bank." "If the capital is exempt why not the whole property of the bank? For everything which belongs to the corporation is the common stock of the company."

S. P., Rome Railroad Company *vs.* Mayor of Rome, 14 Geo., 275.

Mayor of Baltimore *vs.* Baltimore and Ohio Railroad Company, 6 Gill, 288.

State *vs.* Norwich and Worcester Railroad Company, 30 Conn., 290.

The word stock includes all the property of the corporation.

City Council of Augusta *vs.* the Georgia Railroad Company, 26 Geo., 651.

Two other points of appellants argument remain to be answered:

1st. That the charter has been amended, whereby the exemption became subject to repeal, and has been in fact repealed.

This assumes that the 41st section of the Act of 1841 is still of force. That section is "that it shall become part of the charter of every corporation, which shall at the present, or any succeeding session of the General Assembly, receive a grant of a charter, or any renewal, amendment, or modification thereof, (unless the Act granting such charter, renewal, amendment, or modification, shall in express terms except it,) that every charter of incorporation granted, renewed or modified as aforesaid, shall, at all times, remain subject to amendment, alteration, or repeal by the legislative authority."

We deny that the section is of force.

The Act is entitled "An Act to incorporate certain villages, societies and companies, and to renew and amend certain charters heretofore granted, and to establish the principles on which charters of incorporation will hereafter be granted," and the 11th section enacts: "This Act shall be deemed and taken to be a public Act, and shall continue of force for ten years, and until the end of the session of the Legislature then next following."

The Act has not been renewed, continued, or re-enacted. It expired by its own limitation in 1851, and was not of force in 1865, when the Act relied on by appellant was passed.

The right of the State to take legislative control of charters previously granted, existed only by virtue of the 41st section of the Act of 1841.

When the Legislature permitted the Act to expire, it abdicated the power it thereby possessed over corporations.

If the Act of 1841 was not of force in 1865, as we contend, then no grant, renewal or modification of the charter, could bring the corporation under the control of the Legislature, or subject its privileges to legislative action.

But even if the Act of 1841 be regarded as still of force, we submit that there has been no amendment of the charter subjecting it to the control of the Legislature.

All that is relied upon to support this ground, is the passage by the Legislature of an Act to lend the credit of the State to secure certain bonds issued by the South Carolina Railroad Company, approved 1865, 13 Stat., 362; and of an Act to amend that Act, approved in 1866, 13 Stat., 377. Acts passed as much for the benefit of the State as of the corporation.

They constitute neither grant nor renewal of charter. Do they modify it?

It is well settled that a corporation without special authority may make a bond, mortgage, note or draft.

White Water Valley Co *vs.* Valette, 21 How , 424.

But in addition to the general powers, this corporation had special authority to borrow money on mortgage. §§ 16 and 24 of charter.

The Act of 1837 lending the credit of the State to the company, gave no power that was not already in the charter. Nor did it affect the charter. It simply lent the credit of the State to the contract of loan made by the company.

The same aid could have been given by an individual, a city or a bank, endorsing the bonds. The State did nothing more. But the endorsement of the State could only be given by an Act, hence the legislation. The bonds issued by the Louisville, Cincinnati and Charleston Railroad Company, under the Act of 1837, fell due in 1866. Neither the corporation nor the guarantor, the State, were in a position to pay the debt. An extension was for the interest of both, and the Act of 1865, enacted "that for the extension of the debt guaranteed by the State," new bonds should be issued by the corporation and endorsed by the Treasurer of the State, pledging the faith and funds of the State.

It further enacted that, "Whereas, the bonds to be issued in pursuance of this Act, are in substitution of the bonds guaranteed by the State under the Act of 1837;" the property mortgaged by the Act of 1837, "Shall *continue* mortgaged and pledged to the State."

The Act of 1866 amended the Act of 1865, only in matters of detail.

The appellant asserts in argument that these Acts "modified the charter of said company," but has carefully abstained from showing wherein the modification consists.

Nor can the closest scrutiny detect it. Neither of the Acts give, diminish or withdraw power. Neither impose new, or release from old duties. Neither change the mode of performing duties or exercising powers. Neither, in the slightest degree, refer to the charter.

So far from affecting any modification, the very object of

these Acts was to prevent any modification. Their purpose was to continue unchanged the condition of things which existed.

The charter is "the fundamental law of the corporation, defining the powers and obligations, the mode of its internal organization and its relations to the public." Pierce on Railroad Law, 4.

The Act of 1865 does not affect that fundamental law. It only relates to the financial arrangement for the extension of the debt due by the State and Corporation.

That was the subject matter of the legislation. Had the Legislature intended to go beyond that, additional legislation, or legislation in different shape would have been needed, for the Constitution of the State in force at the adoption of these Acts, required that "every Act or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title." § 22, Art. I. of the Constitution of 1865.

We may, also, note that these Acts of 1865 and 1866, were annulled by the Ordinance of the Convention of 1868, entitled "an Ordinance to repeal all Acts of Legislature passed since 20th day of December, 1860, which pledge the faith and credit of the State for the benefit of any corporate body." The acts of 1865 and 1866 having been declared "inoperative" by the ordinance of the State Convention as "pretended acts of legislation" cannot be cited or relied on by the State as operative to modify the charter.

The charter, therefore, not having been amended by the Acts of 1865 and 1866, is not open to repeal, and neither the Act of the Legislature nor the Constitution of the State, can impair the obligation of the contract created by the charter.

The second point of appellant is:

That the Louisville, Cincinnati and Charleston Railroad Company, having failed to complete the road to Lexington, Ky., have forfeited the exemption.

But why limit the forfeiture to the exemption? There is nothing which makes the exemption dependent on the completion of the road. If the charter was granted in consideration of the completion of the road, and the company failed to perform the consideration, the entire contract was broken; not only the exemption, but the charter itself, was forfeited. But

the charter exists, and its existence proves that there was no forfeiture. The argument of appellant proves too much in another respect. If it is sound, then the liability to taxation existed as fully in 1840 as it does now; but appellant is met by the fact that all the State decisions declaring the corporation to be exempt from taxation have been made since 1840.

The inability of the company to complete the road beyond Columbia was known in 1840. See Record, pp. 34, 35.

The Act of 1836, §4, (8 statutes, 431,) amending the charter, had provided that if the State of Kentucky did not assent to the amendments, the company should be "discharged from all obligation to construct any road in the State of Kentucky;" and in 1840 the Legislature of South Carolina passed "an Act, that the Louisville, Cincinnati and Charleston Railroad Company be, and they are hereby authorized, to reduce the stock of the said company, and otherwise settle its affairs upon the following plan." Then follows the details of the plan, and authority to the said railroad company to permit the stockholders in Tennessee and North Carolina to surrender their stock and receive back their money. (11 statutes, p. 127.)

The abandonment of the further progress of the work was thus sanctioned by the Legislature in 1840. The inappropriateness of the corporate name was apparent, and in 1843 the Legislature made it in name, as it was in fact, a South Carolina railroad company. We have already shown that not a single privilege of the charter of 1835 was altered or repealed by the Act of 1843. The legislation of the State is, we submit, a conclusive answer to the argument of forfeiture for non-completion.

It might have been wiser for the State in 1843 to have repealed or limited the exempting clauses of the charter, but the State did not so think. She was a very large stockholder and possibly thought it better policy not to impose the burthen on the corporation. Be that as it may, whether the action of the State was wise or improvident, was a matter "exclusively for the consideration of the State." "Experience may prove that it is a public injury, yet if the contract was within the scope of the authority conferred by the constitution of the State, it is like any other contract made by competent authority, binding upon the parties. Nor can the people or their representatives by any act of theirs afterwards impair its obligation." Ohio Life Insurance Company *vs.* Debolt 16, How., 429.

We have thus far confined ourselves to the claim of the State to tax.

The right of the city of Charleston rests on a still narrower basis.

The Louisville, Cincinnati and Charleston Railroad Company was chartered for the purpose of establishing or constructing a railroad between the cities of Cincinnati and Charleston. §1 and §17 of act of 1835.

It was authorized to purchase "any lands, tenements or hereditaments which may be necessary for the said road, or for the erection of depositories, storehouses, workshops, foundries, &c." Section 32. And the 43 section, exempts the property thus acquired from taxation.

It was clearly necessary for the Louisville, Cincinnati and Charleston Railroad Company to have depots, warehouses, &c., at its terminus in Charleston. All the property thus acquired has been acquired under the charter, for the purposes authorized by the charter, part of it purchased from the Canal and Railroad Company, and part from others. There is no pretence that the company acquired more than was necessary for the proper discharge of their corporate duties. No such issue is made in the case.

As to that portion purchased from individuals, it is unaffected by any other charter than that of the Louisville, Cincinnati and Charleston Railroad Company, and by that is exempted from taxation.

That the Louisville, Cincinnati and Charleston Railroad Company purchased a part of its warehouses, depots, &c., from the Canal and Railroad Company is for reasons already stated immaterial, in point of law, and in point of fact was a benefit to the city. There was but one property exempt from taxation, whereas, if the Louisville, Cincinnati and Charleston Railroad Company had purchased from others, there would have been two corporate properties exempt from taxation.

James Conner

Supreme Court of the United States.

REUBEN TOMLINSON AND OTHERS, Appellants,

vs.

THOMAS BRANCH AND OTHERS.

BRIEF OF MR. MAGRATH

FOR THOMAS BRANCH AND OTHERS.

McGill & Witherow, Printers, 1107 E street, Washington, D. C.

SUPREME COURT OF THE UNITED STATES.

REUBEN TOMLINSON AND OTHERS, *Appellants*,

vs.

THOMAS BRANCH AND OTHERS.

BRIEF OF MR. MAGRATH FOR THOMAS BRANCH AND OTHERS.

The exemption from taxation of the property of the South Carolina Railroad Company is derived from the forty-third section of the charter of the Cincinnati and Charleston Railroad Company, the name of which was afterwards changed to the Louisville, Cincinnati and Charleston Railroad Company. (A. A., 19 Dec., 1835, 8 Stat., 409.) The exemption is in these words: "the capital stock in the said Company, the dividends thereon, and all the property and estates, real and personal, belonging to the said Company, shall be forever exempt from taxation in each and every of the said States of South Carolina, North Carolina, Tennessee and Kentucky; and it shall not be lawful for either of the said States, or any corporate, municipal, police, or other authority, or of any town, city, county, or district thereof, to impose any tax on such stocks or dividends, property or estates."

In 1843 the name of this corporation was changed to the South Carolina Railroad Company. (11 Stat., 273.)

The same Act of the Legislature which changed the name, merged the South Carolina Canal and Railroad Company in the South Carolina Railroad Company, whenever the written assent of all the stockholders of the South Carolina Canal and Railroad shall have been obtained. "Thereupon and thereafter, all the rights, privileges and property belonging to that company shall be vested in the South Carolina Railroad Company." This company then became liable for the debts of the other company,

"and the stock and property of the South Carolina Railroad Company shall be subject to the same liens and charges to which the stock and property of the South Carolina Canal and Railroad Company may be liable."

The privileges granted to the South Carolina Canal and Railroad Company, to which attention may be asked, are the exclusive right of communication by railroad or canal, or a railroad and canal, between Charleston and the Savannah River, at or near Hamburg; the construction of branches to Columbia and Camden, or between these two towns and Charleston; and the exemption from taxation of the stock of the company, and the real estate purchased by them and connected with, and be subservient to the works authorized, for the first period of thirty-six years.

The South Carolina Canal and Railroad Company was chartered with power to construct a railroad between Charleston and the Savannah River at or near Hamburg, and branches thereof to Columbia and Camden.

The rights and privileges of the company were to be sole and exclusive for thirty-six years, and exemption from taxation for the same period. (8 Stat., 354.)

This Act of 1827, (8 Stat. 354,) in the 6th section, provided, that "the rights and privileges of the company hereby authorized to be formed and incorporated, shall be sole and exclusive for the term of thirty-six years; and no other person, persons, or incorporation shall have the right of constructing any railroad or canal communication from the City of Charleston to either of the towns of Columbia, Camden or Hamburg, or to any point on the Savannah River, during this time, without the consent of the company; *provided*, the said company shall commence the canals and railroads, either or all of them, as herein authorized, within two years, and shall complete the same within six years."

In 1835 a charter, as before stated, was granted to the Cincinnati and Charleston Railroad Company, the name of which was changed to the Louisville, Cincinnati and Charleston Railroad Company, and afterwards to the South Carolina Railroad Company, "for the purpose of establishing a communication by railroad between Cincinnati, in the State of Ohio, and Charleston, in the State of South Carolina, through the States

of Kentucky, Tennessee, North Carolina and South Carolina." The company so chartered, "shall have corporate existence in perpetuity in each of the States aforesaid." (8 Stat., 409.)

The circumstances which led to the merging of the South Carolina Canal and Railroad Company in the South Carolina Railroad Company will be referred to hereafter, as well as certain difficulties which were removed by the purchase of the shares of the stockholders of the South Carolina Canal and Railroad Company; and with that the purchase of the rights, privileges and property of that company by the South Carolina Railroad Company.

And this was, in all respects, confirmed by the Legislature of this State, in an Act passed the 19th of December, 1843. (11 Stat., 273.)

The Cincinnati and Charleston Railroad Company, now the South Carolina Railroad Company, has "corporate existence in perpetuity."

The exclusive rights and privileges of the South Carolina Canal and Railroad Company, as also its exemption from taxation, were limited to 36 years; but after that time it might remain incorporated, and vested with all the estate, powers and privileges as to its own works, except the exclusive rights granted to it. (8 Stat., 361.)

The transfer of the rights, privileges and property of the South Carolina Canal and Railroad Company to the South Carolina Railroad Company was by purchase. The purchase approved and confirmed by an Act of the Legislature.

Of the property so purchased, with the exception of the land, it may well be assumed that it has long since been consumed in the use. It is historically known that the track from Branchville to Hamburg and to Columbia much of the property of the South Carolina Railroad Company was altogether destroyed in the march of the Untied States army through the State of South Carolina in 1865. In addition to this, when we remember that for nearly thirty years the South Carolina Railroad Company has been using this track and other property it purchased from the South Carolina Canal and Railroad Company, it would be scarcely doubted that, built as the road was, and is, of wood, its original structure, rails, and all else connected with its use, have been long since worn out and replaced by the South Carolina Railroad Company.

The road from Branchville to Columbia was built originally by the South Carolina Railroad Company; that and the road from Branchville to Augusta were rebuilt in 1865 by the same company.

With the exception, then, of the land purchased from the South Carolina Canal and Railroad Company, there is no other property of that company now held by the South Carolina Railroad Company.

That land is the road-bed and sites for depots, workshops and other purposes, obtained under the Acts of the Legislature providing the mode for obtaining the same; or donations by the State as in the Act of 1833, where, for the public benefit promoted by the railroad, the Legislature vested in the company all lands, not heretofore granted or appropriated by law to the use of the State, within one mile of the centre of the main track of the road and the branches thereof. (8 Stat. 384.)

All of this was held by the South Carolina Railroad Company, under the charter granted to the Cincinnati and Charleston Railroad Company in 1835, by purchase from the South Carolina Canal and Railroad Company; and after the purchase protected by the exemption given in the forty-third section of that Act to "all the property and estates" of that company.

In 1843, when the Legislature approved and ratified the transfer of the rights, privileges and property of the South Carolina Canal and Railroad Company to the South Carolina Railroad Company, it also provided that the South Carolina Railroad Company should be exempted from the forty-first section of the Act of 17th December, 1841. That section provided that "it shall become part of the charter of every corporation which, at the present, or any succeeding session of the General Assembly, shall receive a grant of a charter, or any renewal, amendment, or modification thereof, (unless the Act granting such charter, renewal, amendment, or modification, shall in express terms except it,) that every charter of incorporation granted, renewed, or modified, as aforesaid, shall at all times remain subject to amendment, alteration, or repeal, by the legislative authority." (11 Stat., 168.)

Previously to the time (1843) when the South Carolina Rail-

road Company purchased the rights, privileges and property of the South Carolina Canal and Railroad Company, by and with consent of the Legislature of South Carolina, material changes had been made concerning the purposes of the Louisville, Cincinnati and Charleston Railroad Company.

At the hearing of the case, it appeared that the failure of subscriptions necessary for the enterprise, as first projected, obliged the Louisville, Cincinnati, and Charleston Railroad Company, in 1840, to declare that the scheme, as originally contemplated, was inexpedient and impracticable with the means of the company; that the purchase of the Hamburg road, the completion of a branch to Columbia, with some improvements in machinery and labor, are the only objects contemplated by the company, *of which the State of South Carolina is a part;* and that application be made to the Legislature for a modification of the charter, so as to reduce the stock of the company.

The Legislature, by an Act passed 18th December, 1840, authorized the reduction of stock in the manner provided for by the Act; and the release of the stockholders in Tennessee and North Carolina. The stockholders in Kentucky had been previously released. (11 Stat., 127.)

In 1842, the Legislature passed "An Act to unite the South Carolina Canal and Railroad Company and the Louisville, Cincinnati and Charleston Railroad Company into one corporation. (11 Stat., 234.) The Act was not accepted, but the following provisions show the intention of the Legislature:

SECTION 1. "That the stockholders of the Louisville, Cincinnati and Charleston Railroad Company, be and they are hereby incorporated, and made a body politic and corporate under the name and style of the South Carolina Railroad Company."

SEC. 2. "The said South Carolina Railroad Company hereby incorporated, is hereby invested with all the rights and privileges which have been granted, or now belong to the South Carolina Canal and Railroad Company, and to the Louisville, Cincinnati and Charleston Railroad Company, or to either of them; and shall be liable to pay all the debts and contracts which are obligatory upon either of the said companies; and the liens and charge upon the stock and property of either of the said companies, shall stand as liens and charges upon the

stock and property of the company hereby incorporated, in the same relative order in which they now stand."

SEC. 3. "The company hereby incorporated shall be governed by the same rules and in the same manner as is directed by the amended charters of the Louisville, Cincinnati and Charleston Railroad Company." The rest of this section not material.

SEC. 4. "The stockholders of the company hereby incorporated shall purchase up the shares of the South Carolina Canal and Railroad Company, which are outstanding in the hands of individuals; or in case such purchase cannot be made at fair rates within twelve months, then the stockholders of the said South Carolina Canal and Railroad Company are hereby authorized at any time to make a fair division of the rights and assets of the said company, and to pay, or deliver to the stockholders who hold shares in the same, their respective portions, and to surrender up the charter of the said company; whereupon all the rights and privileges granted to the said South Carolina Canal and Railroad Company, are hereby declared to be vested in the South Carolina Railroad Company hereby incorporated."

If there is a period in the history of this corporation when, if so intending, the Legislature would take from it any privilege or right it had given under the charter of 1835, it would be at this time, when it confessed its inability to carry out the purpose for which it was chartered; and asked the consent and authority of the Legislature to reduce its stock.

But the authority was given; no right or privilege withdrawn; the charter plainly recognized as valued and continuing.

Nor was this, as it might have been, on the part of the State, the exercise of a generous temper only. It was this, but it was more. That the work undertaken by the South Carolina Canal and Railroad Company had proved too heavy for it. Nearly eighteen hundred thousand dollars of subscriptions from stockholders had been expended, and the road from Charleston to Hamburg had only been completed.

In 1840, when the purchase by the Louisville, Cincinnati and Charleston Railroad Company, of the privileges, rights and property of the South Carolina Canal and Railroad Company was contemplated, twelve years had elapsed since the grant of its charter had been made. In the charter of 1827 the company

had been required to begin within two, and complete within six years, the work proposed to be done. The Act amending this charter may have waived the forfeiture threatened in the Act of 1827. But instead of 7,000, the company had increased the number of shares to 12,000, on which subscriptions had been paid equal to $1,500,000; and to these must be added 8,000 shares of new stock on which $30 has been paid—making in all $1,740,000. The whole of its available resources had been called in and its work not accomplished.

To facilitate and confirm the sale of the privileges, rights and property of the South Carolina Canal and Railroad Company to another and stronger corporation would at once be accepted as judicious.

But it was not even so late as 1840 that the Legislature of the Stase contemplated the property of the South Carolina Canal and Railroad Company becoming the property of the Louisville, Cincinnati and Charleston Railroad Company by a sale to that company.

In 1837, two years after the charter granted to the Louisville, Cincinnati and Charleston Railroad Company, the State of South Carolina passed an Act to lend the credit of the State to that company to any amount not exceeding two millions of dollars. The security was the whole estate, property and funds within the State which the said company may then possess, or shall afterwards acquire. In this Act there occurs a proviso: that these terms shall not prevent the said company, "in case *it should purchase the railroad* of the South Carolina Canal and Railroad Company, from mortgaging the said road to the South Carolina Canal and Railroad Company for any sum not exceeding two-thirds of the purchase money, and giving a lien thereof in preference to the mortgage of the State;" liberty is also given to the Louisville, Cincinnati and Charleston Railroad Company to apply the proceeds of the loan, the instalments on the stock called and paid in, and the funds then held, for the purpose of constructing and perfecting the road or roads of the said company.

The same Act provides that "an amount equal to the loan, and of instalments, or subscriptions, made on the part of the State, and the citizens and corporations thereof, shall be applied to the purpose of constructing the road within the State until

it be extended from Charleston, by at least a single track, to the Northern limit of the State; and by a double track from Charleston to the points where the roads from Hamburg to Columbia shall meet; *if such union should take place.*" (6 Stat., 571.)

In this same Act, and following the part just referred to, are these words, "Except that the company may be, and are hereby permitted to apply a sum not exceeding two hundred and fifty thousand of the loans so made to the purpose of connecting the railroad of the South Carolina Canal and Railroad Company, with railroads in Georgia; and provided also, that nothing herein contained shall prevent the company from selling all unserviceable material belonging to the South Carolina Canal and Railroad Company, should it purchase the same." (6 Stat., 572.)

This is the conclusive answer to the objection that the road from Branchville to Augusta was not in the contemplation of the Legislature when it gave a charter to the Louisville, Cincinnati and Charleston Railroad Company in 1835. In 1837 the State lends its credit to this company, contemplates the purchase by it of the railroad of the South Carolina Canal and Railroad Company, and, whether so purchased or not, gives the Louisville, Cincinnati and Charleston Railroad Company the right to connect the railroad of the South Carolina Canal and Railroad Company (which had its limit at Hamburg) with railroads in Georgia.

But still more. In 1838 the Legislature authorized the President and Directors of the Louisville, Cincinnati and Charleston Railroad Company to increase the rates of transportation on the Hamburg and Charleston Road. (8 Stat., 408.) And, further, as showing the expectation and the intention of the Legislature, in the Act of 1839, to extend the charter of the Southwestern Railroad Bank, it is declared that unless the stockholders of the Louisville, Cincinnati and Charleston Railroad Company shall finish the road from Branchville to Columbia with a single track within three years from the 1st January, 1840, the grant of a renewal of its charter to the Bank shall cease and determine. (11 Stat., 88.)

This legislation, therefore, of the State of South Carolina shows clearly that in 1843 the name of the Louisville, Cincin-

nati and Charleston Railroad Company was changed, and, thenceforth, it became the South Carolina Railroad Company. That with the change of its name the purchase was authorized of the rights, privileges and property of the South Carolina Canal and Railroad Company. That with that purchase all that belonged to the South Carolina Canal and Railroad Company passed to, and became vested in, the South Carolina Railroad Company. That this was all done by legislative sanction; and that no change was made in the charter of the South Carolina Railroad Company; no right or privilege given to it under the name of the Louisville, Cincinnati and Charleston Railroad Company was taken away, or even modified. That in the same Act (1843) the Legislature secured all the existing rights of the South Carolina Railroad Company, by expressly providing that it should be excepted from the provisions of the 41st Section of the Act of 1841. (11 Stat., 273.)

Whose property, then, after the purchase of it by the South Carolina Railroad Company, was that which had previously belonged to the South Carolina Canal and Railroad Company, and had been purchased from it by the company first named? Was it the property of the South Carolina Canal and Railroad Company or "the property and estate' of the South Carolina Railroad Company.

Unquestionably it became and was the property of the South Carolina Railroad Company.

If so, as it undoubtedly was, what indicates the intention of the Legislature that this company should hold this property without that exemption which it had declared should belong to "all the property and estates, real and personal, belonging to the said company?"

If with the legislative intent, as it was so plainly expressed in the 43d Section of the Act of 1835, in relation to "all the property and estates" of the Louisville, Cincinnati and Charleston Railroad Company, the same Legislature provides the mode in which the rights, privileges and property of another corporation shall be vested in the Louisville, Cincinnati and Charleston Railroad Company; and expresses no purpose that these should be held otherwise than under the charter of the Louisville, Cincinnati and Charleston Railroad Company, what room is there for the presumption that the Legislature intended it to

be held in a manner different from "all the property and estates" of the Louisville, Cincinnati and Charleston Railroad Company, thenceforth to be known as the Sonth Carolina Railroad Company ?

It will be constantly borne in mind that the State itself was largely interested in the Louisville, Cincinnati and Charleston Railroad Company; and in 1839 had directed its Comptroller-General to issue six hundred thousand dollars of its stock to provide for the instalments due, or to become due, on its stock. (11 Stat., 86.)

The question in this case is widely different from that made in the Philadelphia and Wilmington Railroad Company, *vs.* Maryland, 10 How., 376.

In this case no condition was annexed to the purchase by the South Carolina Railroad Company, no qualification was expressed in regard to any right or privilege it had. There could not be more complete recognition of all rights and privileges given to it than in the same Act exempting it from the 41st Section of the Act of 1841. Yet conditions as to the one and qualification as to the other are to be presumed, that thereby a repeal may be implied of a vested legal right.

If we follow out the history of the South Carolina Railroad Company, as shown in the various acts of the Legislature subsequent to 1843, we will see in all the confirmation of the recognition of the existence of this corporation under the charter of 1835; and of all the powers, rights and privileges belonging to it under that charter; to which were super-added the rights, privileges and property of the South Carolina Canal and Railroad Company.

In 1845 the State granted to the South Carolina Railroad Company the bridge across the Savannah River, but that particular grant was made subject to the 41st Section of the Act of 1841.

In 1850 the State made provision for the payment of instalments due the South Carolina Railroad Company on the shares held in that company. (12 Stat., 70.)

In 1851 the State vested in the South Carolina Railroad Company certain squares and lot in Columbia, with certain portions of two streets. (12 Stat., 128.)

In 1852 the State authorized the South Carolina Railroad

Company to construct a bridge across the Congaree River. (12 Stat., 177.)

In the same Act, it again expressly excepted this Company from the provisions of the Act of 1841, Sec. 41. (12 Stat., 177.)

In 1858 it authorized the Company to continue to use the bridge over the Wateree, though not 35 feet above the bed of the river. (12 Stat., 706.)

In 1858 the Legislature renewed the charter of the South-Western Railroad Bank, and then declared that the capital stock and other property of the Bank should be liable to taxation as other property, on the condition that the South Carolina Railroad Company should continue liable for its debts. But provided that no municipal corporation shall tax its capital or profits without authority from the Legislature. (12 Stat., 729.)

In 1865 the Legislature provided for the extension by the South Carolina Railroad Company of the bonds of the Louisville, Cincinnati and Charleston Railroad Company, guaranteed by the State, as provided in the Act of the 20th December, 1837, and for the same security as was provided in that Act.

This summary of the legislation of the State in relation to the Louisville, Cincinnati and Charleston Railroad Company, since 1843 known as the South Carolina Railroad Company, is necessary for the more perfect understanding of the grounds upon which it is alleged that the property of that corporation is not exempt from taxation.

If there could remain with the Court any doubt as to the construction to be placed on this legislation, or the intention of the Legislature, and, therefore, of the obligation which exists, and has existed, on the part of the State, it would be removed by the clear and positive language of the Courts of this State, whenever called upon for judgment.

In the case of the South Carolina Railroad Company *vs.* Blake, 9 Rich., p. 233, Judge Wardlaw, delivering the judgment of the Court, said: "The South Carolina Railroad Company, by an Act, (1843,) has all the rights and privileges which belonged to either the South Carolina Canal and Railroad Company, under its charter of 1828, (8 Stat., 355,) or to the Louisville, Cincinnati and Charleston Railroad Company, under its charter of 1835."

In the South Carolina Railroad Company *vs.* Columbia and Augusta Railroad Company, 13 Rich. Eq., 339, Chancellor Carroll said: "The Act, (1843,) assuredly in no wise affected the rights or privileges of the plaintiff, (the South Carolina Railroad Company,) under the charter of the Louisville, Cincinnati and Charleston Railroad Company, except by adding to them those of the South Carolina Canal and Railroad Company. * * The operation of the Act was to extend the charter of the Louisville, Cincinnati and Charleston Railroad Company over all the road posessed by the plaintiffs; that is to extend it in the same sense and with the same effect as that charter would have extended by its own operation over the road, had it been entirely constructed, instead of being purchased by that company."

In the State Ex Rel. *vs.* Hood, Treasurer, 13 Rich., Law Rep., 177, Judge Moses, now the Chief Justice of the State of South Carolina, speaking for the Court, said, in reply to the argument that the Act of 1843 reduces the privileges of the South Carolina Railroad Company to those of the South Carolina Canal and Railroad Company: "The Act of 1836 only changed the name of the Cincinnati and Charleston Railroad Company to the Louisville, Cincinnati and Charleston Railroad Company; but left it with all its powers, rights, privileges and exemptions which its charter had previously conferred; and the Act of 1843 also changing the South Carolina Railroad Company, in no way deprived it of all the rights, franchises, powers and privileges and exemptions which the former company by law enjoyed."

Where the Courts of a State have given construction to a contract, as regards State legislation and State Constitutions, it is accepted by this Court as conclusive, except in cases of contracts in which the question is raised under the Constitution of the United States, as to a violation of its obligation. (Jefferson Branch Bank *vs.* Skelly, 1 Black., 436; Sedgwick Stat. and Con. L., 254.)

Such is the history of the legislation in the State of South Carolina, and the construction by the Courts of the State given to the rights vested in the South Carolina Railroad Company. It is in the face of this that these questions are now raised.

1. Whether, by the Acts recited and set forth in the bill of complaint, the South Carolina Railroad Company have such

exemption for taxation as is claimed in the bill of complaint?

2. That, admitting the exemption, the courts of the United States have not jurisdiction, because full, complete, adequate and convenient remedy is given in the courts of the State.

3. That the exemption, if given, as is claimed in the bill of complaint, cannot be held to prohibit other and subsequent Legislatures from recalling or removing such exemption; and that no power resides in the Legislative Department of a State, to extinguish for all time the power of taxation, upon which the existence of government itself depends.

1. To the first objection so made, it is only necessary to recall the words in which the exemption is given: "The capital stock in the said company, the dividends thereon, and all the property and estates, real and personal, belonging to the said Company, shall be forever exempt from taxation." Can words to express a Legislative intent be more clear and comprehensive?

This Court has said, in a case of alleged exemption, "the question is to be answered by the charter itself." (Provi. Bank *vs.* Billings, 4 Pet., R. 514.)

Of this exemption, it may be said, in the language of this Court, in another case: "The sentence is so explicit, that it would seem susceptible of but one construction. There is not a word of doubtful meaning, when taken singly, or as it stands connected with the sentence in which it is used. Nothing is left to inference." (State Bank of Ohio *vs.* Koop, 16 How., 378.) The terms considered by this court—plain in the case of the Washington University *vs.* Rouse, 8 Wall., 440—are in this case much stronger in having the exemption expressly declared to be "forever." In that case, the language of the Act was plain, "all property of the said Corporation shall be exempt from taxation." In this case, the terms used are "the capital stock," "the dividends thereon, and all the property and estate real and personal, belonging to the said Company, shall be forever exempt from taxation."

2. The objection, that there is adequate remedy at law, and therefore that this Court will not sustain the Injunction, now of force, is wholly untenable. Where, then, is the remedy? By an Act of the Legislature of the State, approved 28th Feb., 1870, it is declared, that the collection of taxes shall not be

stayed or prevented by any injunction, writ or order, issued by any court or officer, except as provided in that Act, and in the Act under which the tax was in this case assessed.

If no preventive measuse, could then, be adopted, did the Act itself afford a remedy to the party agrieved? It required the tax assessed to be collected. If collected illegally, what then? Complaint must be made to the County Auditor, who shall submit the matter to the Auditor of the State. What then? If the Auditor of the State approve thereof, in writing, the amount illegally collected shall be repaid out of the County Treasury, on the order of the County Auditor, and so much as shall have been paid into the State Treasury shall be refunded the County Treasury, and the County Auditor shall retain the same in his next annual settlement, and charge the State therewith.

It would be difficult enough, with all the aid that could be afforded a party, to get back the money he had paid in this proceeding; but what will be said of a full, complete, adequate and convenient remedy, where all of it depends on the condition, *if the Auditor of State* shall approve; and the Auditor of State, as the leading member of the Board of Equalization, has not approved; but, on the contrary, holds that the exemption claimed is not of force, and has been abolished by the Constitution of 1868, and Tax Acts of the Legislature.

Is not the case so made, entirely within the rules laid down by this Court, in Osborne *vs.* U. S. Bank, 9 Wheat., 804, where the Court said, the action at law would be an imperfect remedy, confined to a single act, while Chancery prevents the repetition of the act and protects the corporation from permanent injury; and that a remedy at law against the Agent is a "remedy in name only and not in substance."

In Payne *vs.* Hook, 7 Wall., 430, where this Court said, "the absence of a complete and adequate remedy at law is the test of equitable jurisdiction; and the application of this principle to a case depends on the character of the case as disclosed in the pleadings."

And in Watts *vs.* Sutherland, 5 Wall., 78, where this Court held, that, as the measure of damages at law could not go beyond the value of the property, or, if sold, its price, with interest, and could not embrace collateral or consequential

damages, the legal remedy was not adequate, and Equity would give relief.

In Packer *vs.* Sunbury, 19 Penn. R. 211, the Court said, where a party claims a franchise under a Statute, and is in the possession and enjoyment of such franchise, Equity will interfere, because it affords the only plain and adequate remedy.

And in Osborne *vs.* U. S. Bank, this Court said, "the injury done by denying to the Bank the exercise of its franchise, is as difficult to calculate as the injury done by participating in an exclusive privilege;" and "in this and many other cases of continuing injuries, as in the case of repeated ejectment, a Court of Chancery will interpose."

Utterly destitute, therefore, of all remedy was this corporation. With a plain exemption from taxation given to it—an exemption which no court could refuse to recognize—its appeal to the courts of the State was cut off and refused; and its only remedy dependent upon the approval of its exemption by an officer of the State, who had already expressed his disapproval of its claim to be exempt from taxation.

It was in this condition that relief was sought by the stockholders in another State, under the authority of Dodge *vs.* Woolsey, 18 How., 330; and the opinion of the legal advisers of the corporation, that the corporation itself was without adequate legal remedy, either for prevention or redress, brought the case directly within the rule laid down, in Memphis City *vs.* Dean, 8 Wall., 65; sustaining the case of Dodge *vs.* Woolsey. These cases, sustaining the former ruling, in Zabrinski *vs.* Cleveland, Columbus and Cincinnati Railroad Company, 23 How., 381, and by the Chief Justice of this Court, in the case of Perdicaris *vs.* Gas Company (MSS.) applied to the case where a corporation was unable or unwilling, or neglected to oppose an unlawful or oppressive measure.

3. The third proposition submitted in behalf of the State, is that which we believe it was really the purpose and intent of the State officers to have settled; that is, whether the exemption contained in the 43d section of the Act of 1835, was or could be affected by the subsequent action of the State, whether in the form of the adoption of a new Constitution, or any Legislative enactment. It will be seen that the answer of the State officers does not deny the exemption; it submits that question

to the court. But it does contend, that if such exemption does or did exist, it has been taken away by subsequent legislation. The language of the answer clearly sets forth the proposition, "such exemption cannot be held to prohibit other and subsequent Legislatures from recalling or removing such exemption, and that no power resides in the Legislative department of a State to extinguish for all time the power of taxation upon which the existence of government itself depends."

The answer refers to Art. 12th, Section 2d, of the Constitution of the State, which declares that "the property of corporations now existing, or hereafter created, shall be subject to taxation, except in cases otherwise provided for in the Constitution; and Art. 9, Section 1, of the same Constitution, which excepts "mines and mining claims, the proceeds of which alone shall be taxed;" and also, "such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes." And the Act of the General Assembly of the State, 15th September, 1868, and also the Act of 28th February, 1870.

In this 3d proposition the exemption is for the argument conceded; but when so conceded, the cases heard and decided in this Court from an early period when the general principle was laid down; to those of more recent date when it has been practically applied to cases in all respects like this now before the Court, admonishes us that it would be scarcely proper to do more than simply refer to the cases themselves.

Jefferson Branch Bank and Skelly, 1 Black., 436, the Court held that the Legislature of a State may contract by legislation, if not prohibited by the Constitution of the State, to release the exercise of the power to tax a corporation or person, as may appear in its act. * * That a charter granted is a contract which binds the State. * * That the adoption of a new Constitution cannot be applied to a pre-existing charter, without a violation of the contract expressed in the charter. State Bank of Ohio *vs.* Koop, 16 How., 384. Gelpecke, of the City of Dubuque, 1 Wall., 175. Kenosha *vs.* Laman, 9 Wall., 479. Chicago *vs.* Sheldon, 9 Wall., 50.

Binghampton Bridge Case, 3 Wall., 52: That all courts are estopped from questioning the doctrine that an Act of incorporation is a contract between the State and the stockholders.

* * That such contracts are protected from invasion by the Constitution of the United States. That the benefit to be derived is the consideration. * * Where there is no ambiguity, and the intention can be ascertained, effect must be given to it * * if the powers conferred are plainly marked, it is the duty of the court to sustain and uphold them, and carry out the true meaning and intention of the parties. (Von Hoffman *vs.* Quincy, 4 Wall., 535.)

The Home of the Friendless *vs.* Rouse, (8 Wall., 433,) in which the principles before ruled are reaffirmed, that the exemption from taxation may be either for a specified period or permanently. * * That the exemption is presumed to be a sufficient consideration, and binds the State, if the charter containing it is accepted.

And so in the case of the Washington University *vs.* Rou se (8 Wall., 440.) (Wilmington R. R. Co. *vs.* Reid, 13 Wall., 264.)

So far, then, as this proposition is advanced on the part of the State, that the Legislature of 1835 could not, by granting exemptions from taxation, prevent the Legislature of 1868 from repealing that exemption, it cannot be, that after the language, if not the admonition, heard in this court concerning the further discussion of it, we should do no more than merely oppose to the proposition the repeated decisions in this court, in which that question is completely set at rest.

This was the ground upon which the officers of the State, represented by the Attorney General, ask that the South Carolina Railroad Company shall not enjoy the exemption given by the 43d section of the act of 1835. The State, in the answer of its officers, claims that it is no longer bound by the terms contained in the charter and contract, and in the 43d section of the act, which sets forth the exemption from taxation. In asserting its right to tax, it puts in issue no other question than that of its power to repeal the exemption; and to sustain itself in the exercise of that power, submits to this court, that it cannot be prevented from recalling such exemption, because no power resides in the legislative department of a State to extinguish the power of taxation for all time.

The questions so far discussed are the only questions raised in the pleadings. The plaintiffs in error, in their answer to the bill, set forth that the South Carolina Railroad Company is a

corporation created by the laws of the State; that it does not come within any of the exceptions or exemptions from taxation recited in the constitution; but is subject in all respects under the said constitution to assessment and taxation in the same manner as other property in the State. (Rec., 24.) In the answer they further say, that if the South Carolina Railroad Company was ever entitled to an exemption from taxation, such exemption cannot be held to prohibit other and subsequent Legislatures from recalling or removing such exemption. (Rec., 26.)

In the brief filed by the appellants a wider range of discussion is presented than is properly raised by the pleadings; and if the court will consider all the points presented in the appellants' brief, the reply to the same is now submitted.

The appellants present the case as the union of two distinct roads. This is not so; certainly not so in the sense in which it is presented by the appellants, and in which they wish it to be understood. The evidence shows that a nice regard was had to the use of words; and "amalgamation" of the two roads was rejected, and legislation proposed to provide for merging "the South Carolina Canal and Railroad Company," and "vesting all the rights, privileges, and property of that company in this, (South Carolina Railroad Company,) and making this company liable for all debts and contracts of that company." (Rec., p. 20.)

The Legislature used the term "merged." The language in the 2d section of the act of 1843 is plain: "The South Carolina Canal and Railroad Company *shall be merged* in the said South Carolina Railroad Company." "All the rights, privileges, and property belonging to the said The South Carolina Canal and Railroad Company shall be vested in the South Carolina Railroad Company."

This was not the creation of a new company by the union of two or more pre-existing; it was superadding, as the court said, the property, privileges, and rights of one to those which the other then existing had. No right or privilege of the corporation, which received the accession, and which it previously possessed, was qualified or repealed; but all the rights or privileges it had were increased by the addition of what it so acquired.

It was not only actually, but it was in the strictest legal sense, merging that which was the property, rights, and privileges of one in the other.

In that company which received this addition; received it moreover with the express sanction of the State; received it as a corporation in which the State had a large interest—for the State had subscribed for ten thousand shares of the capital stock of the Louisville, Cincinnati, and Charleston Railroad Company, equal to one million of dollars—there had been vested that exemption of taxation already referred to. To that company in 1837 the State had lent its credit for two million of dollars, which in the report of the president the Bank of the State, the fiscal agent of the State, was said to have been intended to pay the cash portion for the purchase of the road: referring to the road of the South Carolina Canal and Railroad Company. (Bank Comp., 551.) To that company the State in 1839 had advanced six hundred thousand dollars, on account of its subscription to its stock, to enable the Louisville, Cincinnati, and Charleston Railroad Company to complete the payment of its debt to the South Carolina Canal and Railroad Company, and to finish the road to Columbia. (Bank Comp., 551.) That exemption was in its terms as broad and comprehensive as it could be. It included "the capital stock," "the dividends," and "all the property and estate, real and personal, belonging to the said company."

"The capital" as well as the "property or estate" of the company were exempt. What was the capital? Eight millions had been considered by the several States, which had granted charters, as the least sum to be subscribed before the work should commence. (Rec., 20.) In 1840 not more than fifty thousand shares remained in South Carolina. (Rec., 20.)

This led to the reduction of its stock, and the Legislature of the State authorized this company to reduce the stock, and otherwise settle its affairs according to a certain plan; and then, in the act of December, 1840, the plan is given. This was done to and for the Louisville, Cincinnati, and Charleston Railroad Company. Done because the original plan could not be carried out. But done without taking from it anything which had been given to it.

And here are two circumstances noteworthy at the time,

(December, 1842:) the Legislature gave the company authority, by and with the consent of the city council of Charleston, to extend *their railroad*—not the railroad of the South Carolina Canal and Railroad Company, but their railroad—to one or more of the wharves in Charleston. And at the meeting of the stockholders in 1841 it is recorded, that "by this amendment, (that is, the reduction of the stock,) it was contemplated that the charter of the company should be limited to the State of South Carolina." (Rec., 20.)

At the time when, according to the theory of the appellants, this company had ceased to exist, except so far as it could bring to itself the protection of the charter of another company, we see its existence recognized; a new plan presented for it; no change made in its charter; and new rights given to it.

The capital of the company it certainly did not get from the South Carolina Canal and Railroad Company; that came from its stockholders, and what it had received for its bonds. That capital could not be taxed. That was the capital of the Louisville, Cincinnati, and Charleston Railroad Company, with its charter of 1835 "limited to the State." The failure of the large enterprise was not because subscriptions had failed in the State of South Carolina. If its capital could not be taxed before it was invested, can it be taxed after it is invested in property? This court has said, "it is not easy to separate the property in which the capital is invested from the capital itself. It requires some refinement to separate the two thus intimately blended together. The capital is not an ideal, fictitious, arbitrary sum of money, set down in the articles of association; but in theory and practical operation of the system is composed of substantial property, and which gives value and solidity to the stock of the association." (Bank Tax Case, 2 Wall., p. 208.)

When the corporators of this company therefore said that the reduction of the stock with the assent of the Legislature made the "charter of the company limited to the State of South Carolina," they had confirmation when in 1845 the Legislature, in requiring the company to begin to make provision for its debts, guaranteed by the State, declared that "the object which the State had in view had been accomplished." (Bank Comp., 610.)

The whole argument of the plaintiffs in error assumes as its

basis that the change in the original plan and purpose of the Cincinnati and Charleston Railroad Company has never received the assent of the Legislature; that on the contrary, because of such change, non-user of corporate privileges is enough to deprive this company of the franchises given to it. That, in fact, the charter of this company is that of the South Carolina Canal and Railroad Company, and not that of the Louisville, Cincinnati, and Charleston Railroad Company.

But that which was once a franchise of the South Carolina Canal and Railroad Company, after, by authority of the Legislature of the State, it was transferred by purchase to the Louisville, Cincinnati, and Charleston Railroad Company, became as much the franchise of this latter company as if originally granted to it.

So, too, in the argument of the plaintiffs in error, it is assumed that the communication by railroad between Charleston and Hamburg was never a part of the purpose contemplated by the Legislature in the charter of the Louisville, Cincinnati, and Charleston Railroad Company. But this is plainly shown to be incorrect, when it is seen that a part of the loan of two millions of dollars, under the act of 1837, was expressly permitted to be applied to the connection of the railroad of the South Carolina Canal and Railroad Company *with railroads in Georgia*. It was this which was particularly given to the Louisville, Cincinnati, and Charleston Railroad Company, and not to the South Carolina Canal and Railroad Company. The actual control of the South Carolina Canal and Railroad Company was thus given to the Louisville, Cincinnati, and Charleston Railroad Company.

The evidence in the case, (Rec., 17, 21,) is all to one point: the necessity that existed recognized as clearly in the action of the Legislature as of this company for the purchase of the road, with the chartered rights and privileges which belonged to the South Carolina Canal and Railroad Company.

That purchase, as has been seen, was therefore effected, and it was so done with the assent of the Legislature. Whatever was property, right, or privilege of the South Carolina Canal and Railroad Company, was thenceforth, to the extent for which it was of value to the purchaser, the property, right or privi-

lege of the Louisville, Cincinnati, and Charleston Railroad Company, the purchaser thereof.

The case of the Philadelphia, Wilmington, and Baltimore Railroad Company *v.* Maryland, (10 How., 376,) was decided in regard to matters which make it wholly inapplicable to this case. And the case of the Rector of Trinity Church *v.* Philadelphia, (24 How., 301,) can in no manner apply.

But to all the argument in behalf of the appellants, especially to that which seeks to maintain the proposition, that because the purpose originally contemplated has not been accomplished, therefore the franchise complained of in this case should be regarded as repealed by implication, we have opposed the proof that the Legislature has sanctioned the change and accepted a substitute therefor. And more than this, we have presented the judgment of the court of errors in South Carolina, that the act of 1843 in no way deprived the South Carolina Railroad Company of all the rights, franchises, powers, and privileges, and exemptions which the former company by law enjoyed. The judgment of the court of errors in the case of The State *Ex Rel. v.* Hood, Treasurer, (13 Rich., L. R., 177,) is an exposition of the question in this case by what was then the highest court in the State of South Carolina.

The decision of the court of errors of the State of South Carolina in a case where the principal question in the controversy here was there ruled, it is submitted, will be recognized in this case by this court.

Where an act done, or omitted to be done, would under the charter be cause of forfeiture, a general legislative declaration, authorizing the doing or omission of such an act, is confirmation of the act done before such legislation. (Vermont and Canada R. R. *v.* Vermont Central R. R., 34 Vermont R., 3.) And in the same case the court said, in regard to the question whether non-compliance with certain provisions of the charter operated as a forfeiture, without the intervention of any proceeding in that behalf; that forfeiture can only be taken in behalf of the public, and by some form of proceeding to which the public by proper representation is the party moving it, and in which by competent authority such forfeiture is declared. (p. 57.)

It cannot be denied that in this case, in a proceeding not

proper for that end, a question is raised which affects not only exemption from taxation, but every other chartered right or privilege given to this company, and derived under the charter of 1835, and the acts amending the same.

True, in the brief of the appellants it is said that the question of non-user in regard to a forfeiture of all the chartered rights of the South Carolina Railroad Company is not before the court; nevertheless it is submitted whether such non-user might not have had much weight with the Legislature when it declared that the property of all corporations should be taxed: and this is said to be proper for the consideration of the court.

But the distinction is too refined. The question is not what the Legislature in 1868 or 1870 intended, but what the Legislatures from 1835 to 1843, and particularly what the Legislature which passed the act of 1843, intended? It is not a question of what is thought *now*, but what was thought or intended *then*. The question of contract *now*, is to be decided by the question as it was understood in 1843.

We have to look at the facts as they existed *then*. We have to inquire whether at that time there is proof of purpose or intent by the Legislature of the State to take away this exemption?

Is that proof of such purpose or intent to be found in the aid which the State gave to this Company in 1837? When it subscribed a million of dollars to its stock? When it advanced to it six hundred thousand dollars of its subscription? When it accepted the fact that subscriptions in other States had failed? When it adapted this Company to a changed condition, by reducing the amount of its stock; and not only authorized, but assisted it in the purchase of another road?

Take the legislation of the State from 1835 to 1843, and from that time to 1865; and in what part of it will there be found proof that any Legislature within those periods regarded any and every franchise contained in the charter of the Cincinnati and Charleston Railroad Company, in 1835, otherwise than as protected by the obligation of a contract?

If the enterprise which was to reach the West had failed, the South Carolina Canal and Railroad Company had also failed, for it had accomplished but a part of the purpose for which it was chartered. The inducements to its stockholders

had failed; and to a stronger corporation was the task committed of completing its work. Was it not, as is said in the Boston and Lowell Railroad case, natural at that time and under these circumstances for the State to encourage capitalists to invest their money?

If this court will not find in the circumstances of that time enough to satisfy it that the State did not then, with the change of the purpose which led to the creation of this Company, intend to deprive it of this or any other franchise it had, it will not now be led to a conclusion, which in the denial of a right to this exemption, will by the same argument strip it of every other franchise, and even of its corporate existence.

A. G. MAGRATH,
For Appellees.